

December 17, 2007

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2007 YEAR IN REVIEW: RISK MANAGEMENT / PAGE 15

NINE-MONTH PROFITS RISE FOR MOST MANAGED CARE COMPANIES / PAGE 3



In Brief

Senate confirms Millard as PBGC director

The Senate late last week confirmed President Bush's nomination of Charles E.F. Millard to be the next director of the Pension Benefit Guaranty Corp. Mr. Millard, who has been serving as interim PBGC director, most recently was a managing director at Broadway Partners L.L.C., a New York real estate investment and management firm. Previously, he was a senior executive at Lehman Bros. and was a senior cabinet official during the administration of former New York Mayor Rudolph Giuliani.

N.Y. warns Greenberg over AIG move

A New York Insurance Department official earlier this month in a letter told former

See **IN BRIEF** page 22

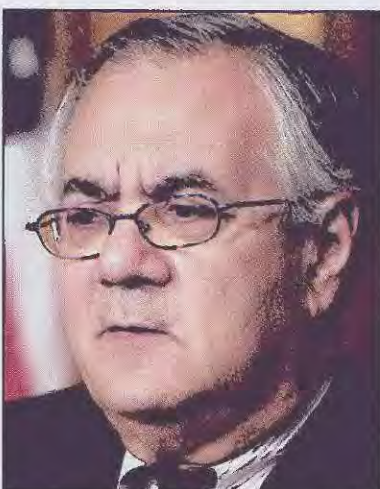
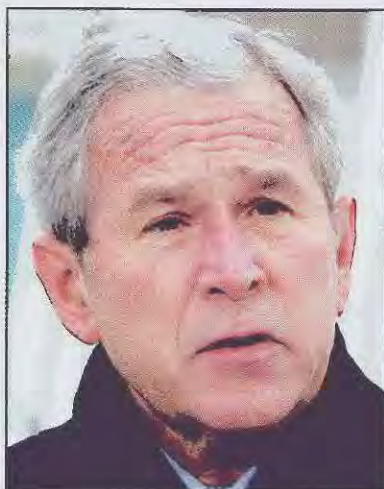
SECTOR BRIEFING

AGRICULTURE & FOOD PRODUCTION

Increased safety concerns raise recall risks for food

processors; disease top concerns for livestock producers; crop growers face catastrophe risks as

weather-related losses increase. **PAGE 9**



REUTERS

President Bush threatened to veto a broad TRIA bill, but Rep. Barney Frank insists the backstop won't expire, even if it means a scaled-down extension.

Deal on TRIA likely despite House vote

Final version expected to follow Senate model

By **MARK A. HOFMANN**

WASHINGTON—Supporters of the federal terrorism insurance backstop remain optimistic the program will remain in place after its slated Dec. 31 expiration despite House of Representatives approval of an extension measure that the administration has threatened to veto.

The optimism stems in part from a promise by the House bill's chief

sponsor, House Financial Services Committee Chairman Barney Frank, D-Mass., who said there is "no chance" the backstop will expire. If need be, the House will take up a more modest Senate extension bill that enjoys White House support before the lawmakers leave later this week, he said.

Like its counterpart passed by the

See **TRIA** page 22

Wellness incentives hit HIPAA roadblock

Labor Dept. guidance may doom programs based on health bias

By **JERRY GEISEL**

WASHINGTON—New federal regulatory guidance could bring to an end health incentive programs that are linked to very high-deductible health insurance plans in which the deductibles are offset by credits that employees receive for meeting specific health criteria.

Under such a design, for example, an employer might offer a health insurance plan with a \$2,500 deductible for individual coverage. Then an eligible employee would receive credits totaling \$2,000 to offset the deductible for meeting specified standards on body mass index, blood pressure and cholesterol and not using tobacco.

The appeal of such plans is obvious: By allowing employees who meet specific criteria to offset the high deductibles, employees have incentives to take steps to improve their health and not be exposed to health care expenses that fall under the deductible.

But benefit experts in recent months have questioned the legality of those arrangements, which are

purchased largely by small and mid-size employers. Critics said such plans likely run afoul of requirements laid down by the federal Health Insurance Portability and Accountability Act.

Among other things, HIPAA bars health plans from discriminating against enrollees on the basis of health and limits total wellness program rewards to 20% of employee-only and family coverage if all covered individuals are allowed to participate in the wellness program.

Some plan vendors, though, said HIPAA restrictions didn't apply to health incentive plans because the plans fall into a supplemental category to which HIPAA nondiscrimination rules do not apply. They noted that certain plans are exempt from HIPAA's nondiscrimination rules, such as Medicare supplemental plans or "similar supplemental coverage provided to coverage under a group health plan."

The term "similar supplemental coverage" is not defined in law or regulations, which has created an opening for certain health incentive plans.

"We had very little direction on what 'supplemental' meant," said Tami Simon, an attorney with Mercer L.L.C. in Washington.

But earlier this month, a Labor

See **HIPAA** page 21

High court to hear case on ADA job applicants

Lower courts divided on whether employers must hire disabled, less qualified workers

By **JUDY GREENWALD**

WASHINGTON—The U.S. Supreme Court may finally resolve the issue of whether employers must offer disabled workers a vacant job if a better qualified applicant is avail-

able.

The court has agreed to review a May 3 ruling by the 8th U.S. Circuit Court of Appeal in St. Louis in *Pam Huber vs. Wal-Mart Inc.*, in which the appellate court held that employees are not required to offer

positions to less qualified, disabled workers. Federal appellate courts have issued divided opinions on the issue.

The case involved Ms. Huber, who sustained a permanent injury to her right arm and hand while working at a Bentonville, Ark.-based Wal-Mart store as a dry grocery order filler. She sought reassignment to a router position as a reasonable accommodation under the Americans with Disabilities Act.

But Wal-Mart required her to apply and compete for the position with other applicants, and ultimately filled the job with a nondisabled applicant, explaining that Ms. Huber was not the most qualified candidate. Instead, it placed her in a

lower-paying maintenance associate position at the time.

The appellate court agreed with a 2000 7th U.S. Circuit Court of Appeals decision and held that the ADA "is not an affirmative action statute" and does not require an employer to reassign a disabled worker "when such a reassignment would violate a legitimate nondiscriminatory policy of the employer to hire the most qualified candidate."

In 1999, though, the 10th U.S. Circuit Court of Appeals in Denver held that under the ADA, employers are obligated to automatically reward a position to a qualified dis-

See **ADA** page 21

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On the Web



LOOKING BACK ON 2007 Major events affecting risk managers this year

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Ride Along Enclosed in Edition 2

Bond insurers scramble amid subprime woes

Top-rated companies seek capital options to avoid downgrades

By DOUGLAS McLEOD

NEW YORK—Several financial guarantee insurers are hustling to shore up their capital as rating agencies review their ratings in the face of steadily worsening subprime mortgage exposures.

Security Capital Assurance Ltd., XL Capital Ltd.'s former financial guarantee unit, said last week that it is pursuing options to raise capital after Fitch Ratings determined that the insurer needs more than \$2 billion in added capital to maintain its AAA rating.

Ambac Assurance Corp. separately announced a deal to cede \$29 billion of its business to Bermuda-based Assured Guaranty Re Ltd. AG Re's parent, Assured Guaranty Ltd., is itself planning a \$300 million stock offering to support more deals to provide "capital relief" to its beleaguered competitors, the company said.

Those moves follow MBIA Inc.'s announcement Dec. 10 that private equity firm Warburg Pincus has agreed to invest \$1 billion in MBIA common stock. MBIA had planned to hold an investor conference call Dec. 14, but canceled the call because of "pending rating agency reviews."

The search for capital stems from the wave of downgrades of residential mortgage-backed securities, col-

lateralized debt obligations and other structured finance products backed by subprime mortgage collateral.

Insurers' exposure to losses on contracts guaranteeing these products has led rating agencies to review the insurers' own capital adequacy.

On Dec. 12, Fitch said it may cut SCA's rating two notches to AA if it does not bolster its capital position by \$2 billion in the next four to six weeks. Fitch focused mainly on SCA's exposure to a \$16.1 billion portfolio of CDOs that were all originally rated AAA but many of which would now carry BBB or junk bond ratings, the agency said.

SCA said it is looking at several options to deal with the capital problem, including using existing

or new reinsurance arrangements, restructuring obligations under its guarantee contracts and raising money through debt or equity offerings. The insurer added, though, that it can't be certain of meeting Fitch's requirements within four to six weeks.

SCA is the Bermuda-based holding company for XL Capital Assurance Inc. and XL Financial Assurance Ltd. Both were units of XL Capital until XL spun them off in public offerings of SCA stock in 2006 and 2007. XL retains a 46% stake in SCA.

Whether XL will now contribute capital to SCA remained an open question last week. If it does not, XL would probably have to write down

See **SUBPRIME** page 20

Benefit plan service fee disclosure rule proposed

By SALLY ROBERTS

WASHINGTON—Employee benefit plan fiduciaries will gain more insight into the fees charged by various service providers and any potential conflicts of interest that could influence the providers under a disclosure rule proposed last week by the U.S. Department of Labor.

The proposed rule is the second of three fee-related regulations the DOL plans to issue. It requires service providers to disclose to plan fiduciaries of 401(k) plans and other employee benefit plans in writing all services to be furnished; all direct and indirect compensation to be received; and any potential conflict of interest, such as material third-party relationships, that could affect their objectivity under a service contract or arrangement.

"One of the department's top priorities is improved disclosure in order to ensure that participants and fiduciaries have the information they need to make informed decisions," said U.S. Secretary of Labor Elaine L. Chao, in a statement. "We are moving quickly to implement regulations that foster fair, competitive and transparent prices for services as well as combat excessive or hidden plan fees."

Under the Employee Retirement Income Security Act, plan fiduciaries are required to act solely in the interest of participants and beneficiaries and to pay only reasonable plan expenses that are necessary, said Bradford P. Campbell, assistant secretary for the Labor Department's Employee Benefits Security Administration, in a conference call announcing the proposed rule. But because of the increased complexi-

ties within the financial services industry, it has become more difficult for plan fiduciaries to understand how service providers are compensated and whether conflicts exist, he said.

"We're helping define what 'reasonable' means so it's clear when that duty has been met," he said.

The proposal affects only certain providers: fiduciary service providers; providers of banking, consulting, custodial, insurance, investment advisory or management, record-keeping, securities brokerage, or third party administration services; or providers that receive indirect compensation for accounting, actuarial, appraisal, auditing, legal or valuation services.

The Labor Department estimates that the cost of the proposed regulation, which falls on the service providers, will be about \$52 million in the first year of implementation and about \$36 million the second year. The benefits, including possibly lower fees, increased efficiencies and reduced costs, will outweigh the costs of compliance, the Department of Labor said.

Under the proposed rule, plan fiduciaries that enter into contracts that are not "reasonable" because, unknown to them, the service provider failed to comply with its disclosure obligations, are provided an exemption.

The proposed rule is the second of three fee-related regulations the Department of Labor will issue, Mr. Campbell said. The first governs disclosure by plans to the public and government and the last, which will be issued "in the next couple of months," will govern disclosure by plans to plan participants.



Secretary of Labor
Elaine L. Chao said the
rules would help foster
competitive prices.

MAJOR MANAGED CARE RESULTS

Organizations ranked by net income for first nine months of 2007. Dollars in millions.

Company	Net income	% Increase (decrease)	Revenues	% Increase (decrease)
UnitedHealth Group Inc.	\$3,438.0	15.2%	\$56,726.0	6.2%
Kaiser Permanente	2,500.0	NM*	\$28,200.0	9.5
WellPoint Inc.	2,486.3	8.4	45,572.9	7.3
Aetna Inc.	1,382.0	9.1	20,455.2	8.9
CIGNA Corp.	866.0	8.8	13,168.0	6.7
Humana Inc.	590.5	77.6	18,951.2	20.2
Coventry Health Care Inc.	441.8	9.4	7,091.6	22.4
Health Net Inc.	76.8	(68.6)	10,525.0	8.5

*Figure not meaningful because of anomalous first-half profit increase due to reserve reduction and contract renewals.

Managed care providers' nine-month profits rise

Rate increases remain in 6% to 8% range for most companies

By GLORIA GONZALEZ

Major managed care companies posted solid profits in the first nine months of 2007, with commercial health care cost and premium increases expected to remain stable for the rest of the year.

Pricing is becoming more competitive in certain markets between for-profit and nonprofit health insurers (see chart) although they generally have maintained pricing discipline at this point, analysts say.

Medical cost and rate hikes continued to hover in the 6% to 8% range in the first nine months of the year. WellPoint Inc., the largest managed care company in membership, expects its medical cost trend to remain at less than 8% based on trends so far this year.

"We remain very disciplined in our underwriting approach and do

not target business that we believe is priced below our profitability targets," Wayne DeVeydt, chief financial officer of the Indianapolis-based health insurer, said during the company's third-quarter earnings conference call.

Several nonprofit Blue Cross Blue Shield Assn. health plans are utilizing strong capital positions to aggressively price products and expand market penetration, which could pressure overall pricing, said Joseph Marinucci, credit analyst with New York-based Standard & Poor's Corp. "We think (pricing is) going to be a little tighter," he said.

Although some Blues are pricing competitively, "most are pricing rationally," said Sally Rosen, managing senior financial analyst with Oldwick, N.J.-based A.M. Best Co. Inc.

Aggressive pricing is being driven by the difficulty in achieving organic growth in a stagnant commercial market and the need to strengthen positions in other segments, such as

See **MANAGED CARE** page 6

Employer can sue when worker sex harassment claim fails

Some say Ohio ruling adds balance; others cite employee rights

By JUDY GREENWALD

COLUMBUS, Ohio—An employer that sues an employee who filed but lost a suit alleging sexual discrimination is not necessarily being retaliatory and should be allowed to prove its suit has merit, the Ohio Supreme Court has ruled in a divided opinion.

"If an employer can demonstrate that a lawsuit against an employee who has engaged in a protected activity is not objectively baseless, the suit shall be allowed to proceed," the court ruled 4-3 last week in *Tammy Greer-Burger vs. Laszlo Temesi*.

Ms. Greer-Burger filed a sexual harassment suit in 1998 against Mr. Temesi. However, a jury found in

favor of Mr. Temesi, who reportedly owned a now-closed jewelry store, the ruling said. Mr. Temesi then sued Ms. Greer-Burger, charging abuse of process, malicious prosecution and intentional infliction of emotional distress. He also sought compensatory and punitive damages.

An administrative judge for the Ohio Civil Rights Commission concluded Mr. Temesi's suit was retaliatory. The commission then ordered Mr. Temesi to drop the suit and pay Ms. Greer-Burger the \$16,000 she had incurred in attorney's fees defending the suit. A state court and an appellate court affirmed the commission's decision.

However, the Ohio Supreme Court overturned the rulings.

"The right to petition one's government for the redress of grievances is enshrined within the First Amendment to the United States Constitution," the opinion

said. "In applying the law to the facts of the case, we cannot countenance the (commission's) conclusion that Temesi's act of filing suit is per se retaliatory."

Even assuming Ms. Greer-Burger established a prima-facie case of retaliation, "Temesi must be afforded an opportunity to show that there is an objective basis for his lawsuit," the court ruled. The commission's position "has the potential to give employees a carte blanche right to file malicious, defamatory and otherwise false claims."

It remanded the case to the commission "to determine whether Temesi can establish that his claims are not objectively baseless."

Frederick M. Gittes, an attorney with Gittes & Schulte in Columbus, filed a brief in support of Ms. Greer-Burger on behalf of the Ohio Employment Lawyers Assn. and the Committee Against Sexual Harass-

ment, both based in Columbus.

"Our biggest concern is that (the decision) will permit employers to file retaliatory lawsuits, which will force employees to have to defend themselves for simply exercising their right to file a complaint," Mr. Gittes said.

However, William Marshall, solicitor general for the state of Ohio, which represented the commission in the case, said, "The decision still allows the Ohio Civil Rights Commission to be able to enjoin baseless claims that are brought in retaliation for legitimate discrimination claims."

It leaves intact the basic principle "that employers can't attempt to intimidate their employees by using lawsuits to retaliate against legitimate employment discrimination claims," Mr. Marshall said.

Jonathan T. Hyman, an employer attorney with Kohrman Jackson & Krantz P.L.L. in Cleveland, wel-

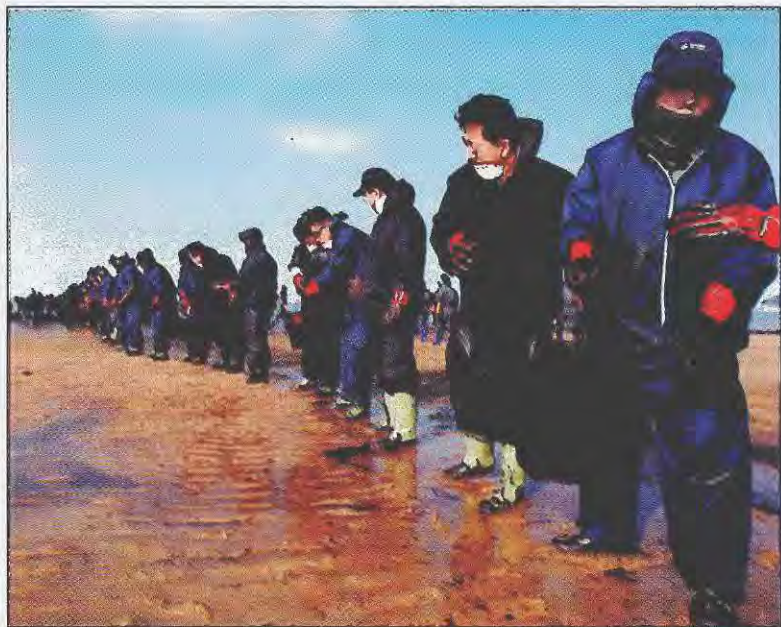
comed the decision.

The court "was basically balancing employees' right against retaliation against anybody's right under the First Amendment of the Constitution to petition the court and file a lawsuit," said Mr. Hyman, who was not involved in the case. "When you're balancing degrees of importance, the Constitution is going to, and should, trump" the employee's right against retaliation.

He added, though, that employers should "think long and hard" before filing such suits. The employee's attorney would likely allege that such a suit is retaliatory, he said.

Employers "face an uphill battle in the courtroom anyway" because those who serve on juries are more likely to be employees than employers, said Mr. Hyman.

Greer-Burger vs. Temesi, Slip Opinion No. 2007-Ohio-6442



Residents and volunteers join cleanup efforts, costs of which have already topped \$330 million, following an spill near Taean, South Korea, that spilled 2.7 million gallons of oil.

Insurer impact limited in record S. Korea spill

Tanker-barge mishap may have greatest effect on P&I clubs

By GLORIA GONZALEZ

TAEAN, South Korea—The worst oil spill in South Korean history is expected to be a costly environmental and economic disaster and insurance coverage for the tanker involved was written by two professional and indemnity clubs.

The Hebei Spirit, an oil tanker

managed by Hebei Ocean Shipping Co. Ltd. in Hebei, China, began leaking about 2.7 million gallons of oil after being damaged by a barge owned by Samsung Heavy Industries Ltd. on Dec. 7. The spill has already resulted in cleanup and other costs of more than \$330 million.

The Hebei Spirit is a registered vessel in two P&I clubs covering marine risks: Assuranceforeningen Skuld in Oslo, Norway, and China Shipowners Mutual Assurance Assn.

See **TANKER** page 6

Errors & Omissions

A story in the Dec. 10 issue, "Bigger Is Not Always Better With Benefit Consulting Firms," misstated the size of company that New York-based Frenkel Benefits L.L.C. focuses on. Frenkel services companies with 50 to 10,000 employees and focuses on companies with 500 to 10,000 employees.

Lawmakers push for immediate defined contribution plan enrollment

Democrats also back independent advice, clear fee disclosures

By JERRY GEISEL

WASHINGTON—Congress should seriously consider changing retirement savings plan law to eliminate waiting periods so employees can enroll immediately in 401(k) and other defined contribution plans, two lawmakers said last week.

"Long waiting periods don't make any sense," said Rep. Rob Andrews, D-N.J., during a briefing.

Rep. Andrews and Rep. George Miller, D-Calif., who chairs the House Education and Labor Committee, said other changes legislators should consider include requiring employers to offer automatic enrollment programs. Currently, about one-third of large employers offer such programs in which

employees are automatically enrolled, with a stipulated percentage of their salaries contributed to the 401(k) plan unless they specifically opt out.

"We have to get people into the system," said Rep. Andrews in referring to the need for both immediate and automatic enrollment.

Additionally, the lawmakers said consideration should be given to the federal government matching lower-income employees' 401(k) contributions. They also said plan participants should have access to independent and unbiased investment advice, and that 401(k) plan investment fees be reasonable and clearly disclosed.

Rep. Andrews also said tighter rules may be needed to make it

more difficult for employees to withdraw 401(k) plan account balances prior to retirement, such as requiring that a pre-retirement distribution automatically be rolled over into a savings plan sponsored

by an employee's new employer. Such distributions are costly to participants, Rep. Andrews said. Taxes and penalties are assessed when such funds are withdrawn.

The legislators' suggestions, which they may turn into legislation, coincided with release of a Government Accountability Office report, which found that many

employees eligible for 401(k) plans don't enroll; of those that do enroll, many don't put in enough to ensure that they will have adequate savings when they retire.



Rep. Rob Andrews, D-N.J., supports automatic, immediate company pension plan enrollment.

Audit: SCIF oversight inadequate on hundreds of millions in spending

By ROBERTO CENICEROS

SACRAMENTO, Calif.—A "top-down" audit of California's State Compensation Insurance Fund released last week revealed "serious structural and operational issues," including hundreds of millions of dollars spent on vendors without adequate controls.

Among other problems, SCIF paid \$19.5 million in penalties from January to July because of late payments for medical and indemnity

bills, according to the audit released by California Insurance Commissioner Steve Poizner.

SCIF has also spent \$321 million on 200 information technology vendors since 2004 without adequate internal controls or even background checks on the legitimacy of the consultants, the audit found.

One vendor working for SCIF as an insurance lobbyist was convicted of a felony in 2003. In addition, SCIF's business practices allowed additional payments to vendors

that were outside an approved budgetary process, the audit found.

California's largest workers comp insurer also owns more than 2,000 vehicles and has 8,000 employees. Despite significant acquisition and maintenance costs, SCIF has not performed an audit of fleet management since 2003.

But the insurance commissioner indicated that SCIF has been aware of the problems and he expects the insurer will continue to make necessary reforms.



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Business Insurance OPINIONS

Road clear for passage of terrorism backstop

NOW THAT THE HOUSE of Representatives has played out its game in passing legislation—for the second time since September—to extend the federal terrorism insurance backstop, the road looks clear for final passage of a measure that President Bush will sign.

We call last week's action a game because backers had no expectation that the Senate, which earlier passed its own bill to extend the backstop, would accept the House bill.

Instead, chief House sponsor and House Financial Services Committee Chairman Barney Frank, D-Mass.—who has consistently supported extending the backstop—wanted to show the Senate that House members wanted to go in a different direction and had the votes to do so.

Having done that, Rep. Frank is, fortunately, accepting political reality. Almost certainly the House will act this week on the Senate-passed bill. Indeed, Rep. Frank said as much last week, noting that the backstop will not be allowed to expire on Dec. 31.

Rep. Frank's gripe has been that the Senate wanted the House to vote on the Senate bill rather than bridge differences between the separate measures passed by each chamber. He had a point. Without the House's initial expansive bill, odds are the Senate would not have produced a bill that extends the program for seven years.

But Rep. Frank's approach missed a key issue. Senate leaders who drew up that body's bill had one overriding objective: producing a measure that President Bush would sign. That objective was met.

Too often, we have seen bills being passed by legislators—the most recent example being measures to extend a successful program that provides health insurance coverage to children in low-income families—to score political points or deliver a message but no serious expectation of final enactment.

That strategy undercuts what we think the legislative process is all about: drafting and passing needed bills that the executive branch will sign. With little time remaining, Rep. Frank appears ready to accept political reality. We welcome that realization.

Roundtable's support should help OFC effort

SUPPORTERS OF OPTIONAL federal charters for insurers and producers got an early Christmas present recently when the influential Business Roundtable threw its support to the idea.

Such support isn't to be taken lightly. The Washington-based organization consists of chief executive officers of leading U.S. companies, the kind of people whose voices get heard on Capitol Hill. That alone should help the OFC effort.

More importantly, the Business Roundtable's move underscores that the OFC question is not simply a matter of intra-insurance industry debate—it's a matter of concern to some of the most sophisticated representatives of the economy as a whole.

As Business Roundtable President John J. Castellani said in a letter to congressional leaders earlier this month, "regulations must be modernized and reformed in a way that will allow the American economy to keep pace with our global counterparts. One way to enhance America's competitiveness is to modernize insurance regulation."

The constituency for regulatory change already had included risk managers, insurers, producers and public policy experts. It's a constituency that we hope continues to grow to the point that lawmakers will have no choice other than to approve legislation that will bring insurance regulation into the 21st century.

Too often, we have seen bills being passed by legislators to score political points or deliver a message.



Letters

Reservation of rights is not poor claim service

TO THE EDITOR: Regarding your Dec. 10 article, "Claims Service Quality Varies Widely: Study," perhaps I was the only reader doing a double-take when reading that, according to one risk manager, a purported sign of poor claim service in commercial lines is that insurers are "quick to issue reservation of rights" letters on some claims.

The innuendo here is that such reservations by insurers are invariably without merit. Such an assumption is unproven at best and dubious at worst.

Surely there are instances of meritless reservation of rights. Doubtlessly there are also instances of insureds submitting claims of dubious coverage, or of sloppy brokering leaving unwitting coverage gaps in a compa-

ny's protection.

To equate quick reservation-of-rights stances with poor claim service is ridiculous. Further, in many states, there are tight time limits within which insurers must reserve rights, lest they waive valid coverage defenses.

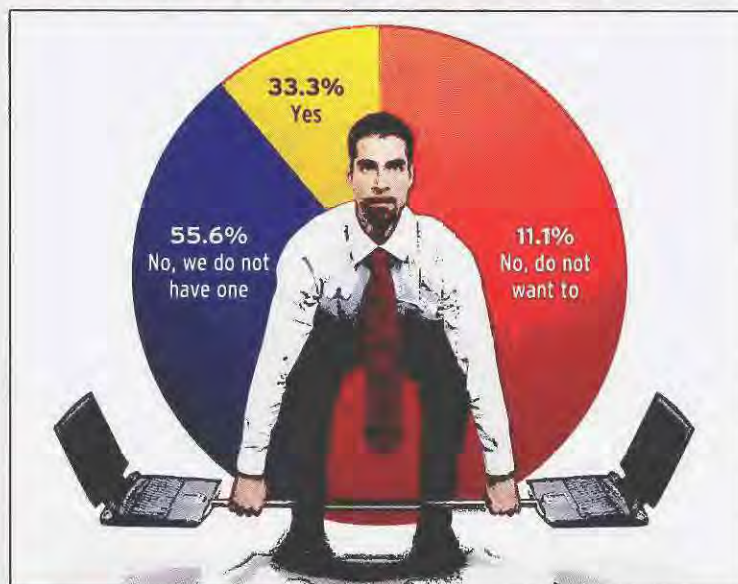
Failure to do so results in paying gray-area claims, the cost of which is ultimately passed to insurance buyers.

Someone must speak up for the claim folks here in challenging the article's inference. Does submitting a claim of complex or dubious coverage make a company a bad policyholder?

Kevin Quinley, CPCU
Senior Vp
Medmarc Insurance Group
Chantilly, Va.

Online Poll at www.businessinsurance.com

Do you participate in a wellness program at your employer?



NEXT WEEK'S POLL: What are the chances of insurance regulatory reform at the federal level in 2008?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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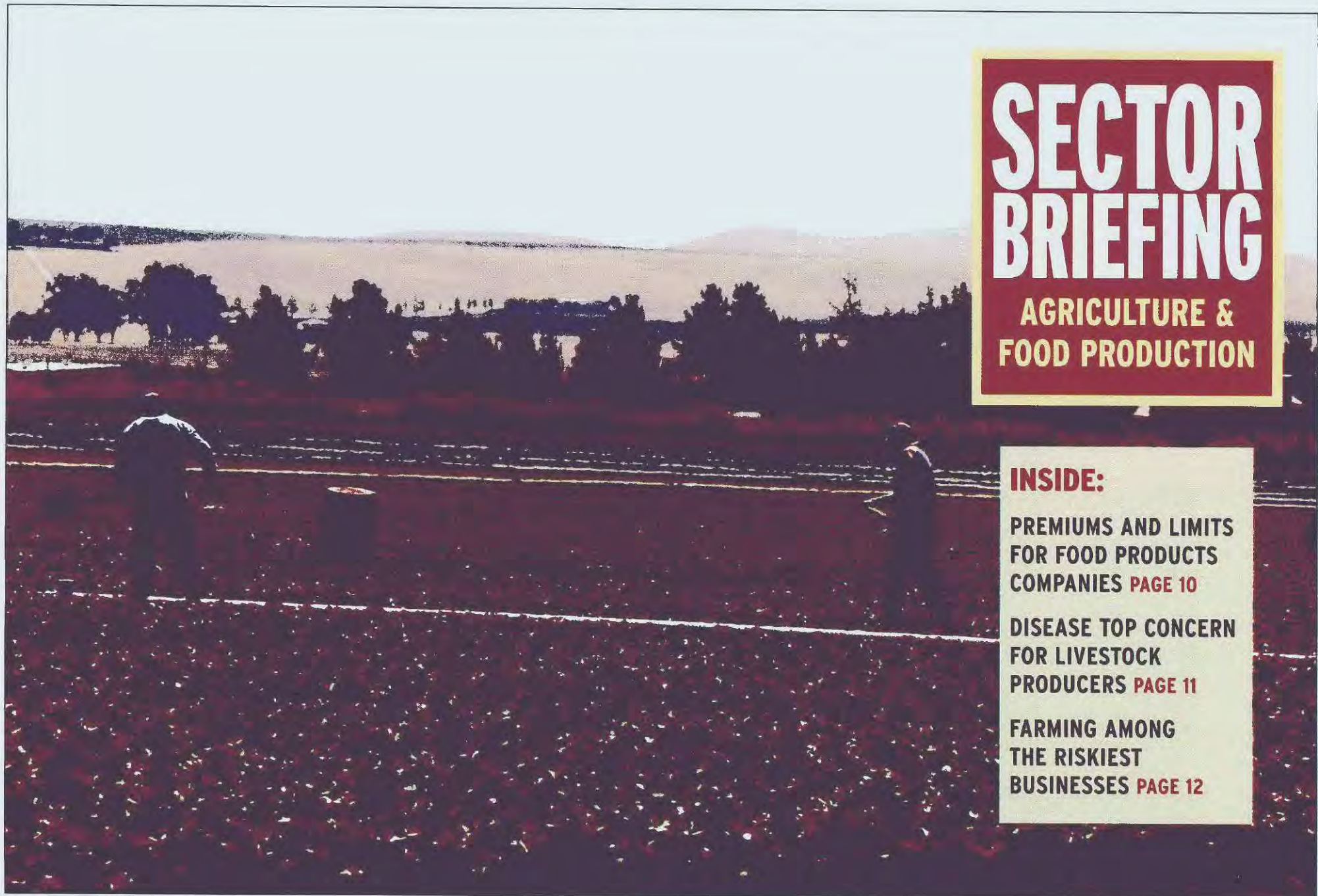
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SECTOR BRIEFING

AGRICULTURE & FOOD PRODUCTION

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FARMING AMONG THE RISKIEST BUSINESSES PAGE 12

LANDOV

Spinach growers have made changes to their operations, including fencing in fields, to help protect against possible contamination. Technology giving consumers immediate access to information has made it necessary for companies to have crisis management programs available to respond quickly to any problems.

Technology heightens risks for companies during food recalls

Recovery from tarnished reputations due to immediate dissemination of information can be difficult

By TONY DOWDING

Glass contamination in baby food and pet food; E. coli bacteria in bags of spinach; benzene in soft drinks; botulism in hot chili sauce; and a bubonic plague-type virus in yogurt—these are not taken from the latest Hollywood horror movie, but are examples of real or alleged contamination of foods that resulted in a recall.

In the past couple of years, the United States has seen major recalls that involved spinach, pet food and the second-largest beef recall in U.S. history, while in Europe, there were recalls over food dyes and over salmonella in chocolate.

"The public are more aware of recalls, and demand more information, and higher safety," said Ann Butterworth, Weston, Mass.-based underwriting products specialist for Boston-based Liberty Mutual Group Inc. "However, I would say that the perceived risk is probably greater

than the actual scientific risk."

Steven Levine, a member of the Rocky Mountain chapter of Risk & Insurance Management Society Inc. in Colorado, and the risk manager of a U.S.-based food manufacturing operation, said technology plays a key role in consumer attitudes.

"Technology allows for immediate dissemination of information and people are bombarded with news, advertisements and blogs, hundreds or even thousands of times daily," he said.

"People make snap decisions based on very little information thus making 15-second snippets the crux of people's decision-making process. A negative reputation, even unfounded, can be difficult to recuperate from," Mr. Levine said.

In addition to consumer attitudes, legislation also has an impact on the number and cost of recalls.

In September, Sen. Sherrod Brown, D-Ohio, and Sen. Bob Casey, D-Pa., proposed food and

product safety legislation in the United States, the Food and Product Responsibility Act of 2007. While in Europe, the European Union brought in the revised General Product Safety Directive (2001/95/EC), which came into force in 2004.

"Increased legislation in both the United States and the European Union makes the recall landscape more onerous for companies," said London-based Ed Mitchell, senior underwriter for product recall at XL Insurance, part of Hamilton Bermuda-based XL Capital Ltd.

"In the United States, the recent introduction of the Brown-Casey bill would require companies to have financial resources in place to cover a recall and highlights the scrutiny that is placed on companies today.

"And in the European Union, we now see the impact of new legislation introduced a few years ago that governs recall, as companies

increasingly fall foul of their regulatory obligations when contending with a contamination situation," Mr. Mitchell said.

Ms. Butterworth agreed: "I think legislation has had a big impact on the liability of U.S. food producers in this area. More information is shared, and the U.S. Food and Drug Administration is working on a pilot program right now on the way that they share their recall information. There may be a change in how they show information. This leads to more transparency and presumably, also means more liability when things go wrong."

Some industry observers say that new technology means an increased risk of defect detection, but Ms. Butterworth disagrees. "I do not think technology has increased the risk, but it certainly improves the analysis of the risk. Computerization has speeded up the test process in the laboratory. It has also enabled companies to source the

product, to go all the way back down the chain and find out where the original source is, and that has been a tremendous advantage. Because the tests are faster, they have been able to get to the direct source faster. Product recall is, therefore, easier and faster, and the expenses will be less," Ms. Butterworth said.

Mr. Levine, said he believes that technology has had an impact, but in a different capacity. "To use Thomas Friedman's (author of "The World Is Flat: A Brief History of the Twenty-First Century") concept, it is technology that creates the greatest risk due to the speed at which a reputation can be tarnished," he said.

"Just look at the propaganda that surrounds Chinese toys. People in the United States are afraid to purchase such toys, even though subsequent information has all but vindicated

See **RECALL** next page

SECTOR SNAPSHOT

AGRICULTURE
& FOOD PRODUCTION

AGRIBUSINESS is the combination of food producers and processors. In the United States alone, this sector includes 2.1 million farms, thousands of meat and dairy entities and tens of thousands of food processing companies. Food packagers range from local firms to multinational corporations that manufacture, package and market foods for final consumption. Information provided by Advisen Ltd. offers insights into the food products industry sector.

\$235.3 BILLION

Total U.S. cash receipts in 2006 from farm marketing, including livestock ranchers and dairy farmers



Premium and limits distributions for food products companies with over \$100 million in revenues

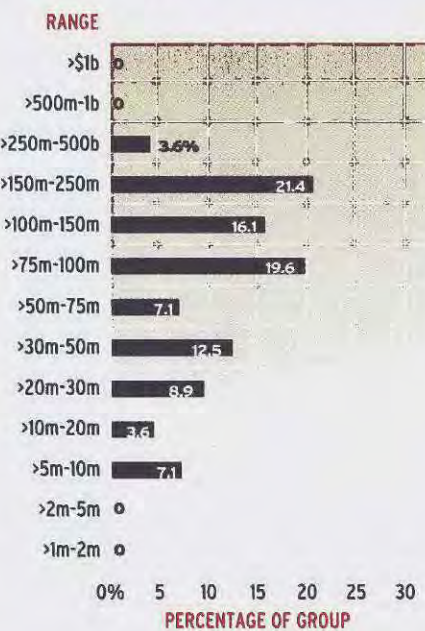
UMBRELLA/EXCESS PREMIUM

Insurance programs studied: 57



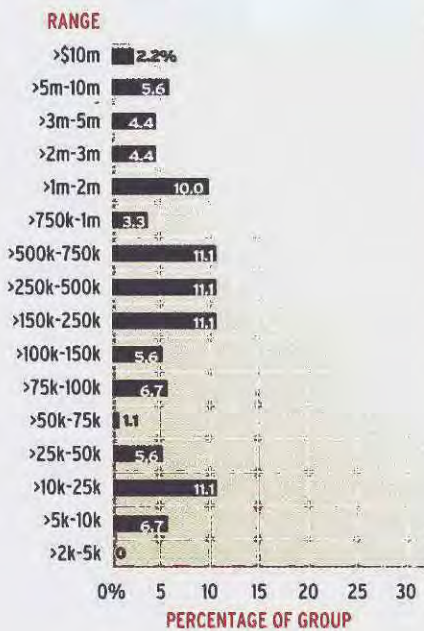
UMBRELLA/EXCESS LIABILITY LIMITS

Programs studied: 56



PROPERTY PREMIUMS

Programs studied: 90



PROPERTY LIMITS

Programs studied: 88



Source: Advisen Ltd. For additional data on this and other industry sectors, visit www.advisen.com or call 1-212-897-4800

Recall: Technology heightens risks for companies during food recalls

CONTINUED FROM PREVIOUS PAGE

cated the Chinese manufacturers as abiding by engineering standards supplied by U.S. firms," he said.

"Word spreads so quickly in the modern world that to have a formalized crisis management program available at one's fingertips to 'stop the bleeding' is crucial, especially with regard to potential food contamination claims," Mr. Levine said.

The main risks faced by food producers include accidental or malicious contamination, quality issues, packaging issues and mislabeling, according to Derek Mason, chairman of the London-based Assn. of Insurance & Risk Managers' Food and Distribution Industry Group. Product recall insurance, either as a

stand-alone policy or as an additional cover in a property policy, pays for expenses in the recall process.

In the past, recall policies were often seen as expensive and takeup rates were poor. "Product recall policies—whether they be for food and drink risks or other sectors of industry—are commonly perceived as expensive against general insurances like product liability," said David Page, executive director of global markets for international business at Willis Group Holdings Ltd., based in London.

"The general feeling is that take-up, while still poor, has improved as a result of a greater awareness of buyers as to the benefits of such cover, possibly as a result of claims in the public domain," he added.

'I regard contamination insurance as a catastrophe cover, and it has a vital role to play for anyone that is involved in the food industry.'

Derek Mason, Assn. of Insurance & Risk Managers

Mr. Mason said that he does not see product recall as an expensive form of coverage, especially in comparison to property. "Although I am aware that there are some compa-

nies that regard it as a bit of a 'grudge buy,'" Mr. Mason said.

"Deductibles are higher than for property, since limits are not as high as for property, but substantial limits are still available. From a corporate governance point of view, when you look at the incidents of recall across Europe—which are quite high—there is a school of thought that recall insurance is a no-brainer," Mr. Mason said.

He added: "I regard contamination insurance as a catastrophe cover, and it has a vital role to play for anyone that is involved in the food industry, large or small."

In the end, product recall is all about the protection of reputation. As Mr. Mitchell points out, the most "catastrophic" potential cost can arise from the company's loss of

reputation. Once consumers stop buying a company's products after a serious contamination situation, the physical costs associated with the recall can seem "immaterial."

A number of product recall insurance policies provide consultancy services and include security specialists (in the case of malicious product tampering or extortion) and laboratory services.

Mr. Levine believes that these services are vital. "I believe that the most important benefit of product recall coverage is the one source mitigation services provided, thus minimizing the need to create one's own internal program from the ground up. If these services were absent, I do not believe the coverage would be perceived as valuable," he said.

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Disease a top concern of U.S. and European livestock industry

Aside from government programs, takeup of insurance turns sluggish as producers intensify their focus on prevention

By TONY DOWDING

Europe has been hit by outbreaks of livestock diseases such as foot-and-mouth, bluetongue and avian flu this year. While the outbreaks have largely been contained and the costs have been relatively small, they have left the farming industry nervous, and with good cause.

For livestock farmers, there is the

ever present threat of a major outbreak, followed by a large-scale slaughter of animals and restrictions on livestock movement. In the particularly hard-hit United Kingdom, both the bovine spongiform encephalopathy crisis of the 1990s and the foot-and-mouth outbreak of 2001 resulted in the slaughter of millions of animals.

The unknown potential of avian flu is also a cause for considerable concern. The Rome-based Food and Agricultural Organization of the United Nations warned recently

that avian flu virus H5N1 could become established in chickens and domesticated ducks and geese in parts of Europe. The agency said that Europe should prepare for further avian flu outbreaks if the virus persists throughout the year in domestic waterfowl.

For farmers, compensation from the government provides some comfort. Government compensation programs vary throughout the world, but the one thing they have in common is that they cover only the physical loss of the animal and

provide no recompense for consequential losses.

"In the United Kingdom, the state provides nothing for consequential losses," said Stuart White, a partner at London-based law firm Reynolds Porter Chamberlain L.L.P.

"So where a farmer has not had an animal slaughtered, but has incurred the cost of feeding through the winter because they have not been able to take it to market, that financial cost is not payable by the government. If you do not have insurance, then, in my reading of

the relevant case law, you will not stand much hope of getting compensation through the courts for financial losses," Mr. White said.

While the value of the animal may be compensated, said Robert Sheasby, rural surveyor with the U.K.'s National Farmers Union based in Stoneleigh, England, no provision is made for the often substantial consequential losses that a business suffers as a result of a disease outbreak.

See **LIVESTOCK** next page

LIVESTOCK COMPENSATION PLANS

How seven nations pay livestock producers for certain diseases in animals

UNITED STATES

■ The U.S. Department of Agriculture pays 50% indemnity for diseased or exposed animals, and pays up to 100% in the case of poultry and avian influenza. The USDA can declare an emergency and pay 100%, but it is discretionary. There is no compensation for lost income or financial losses.

UNITED KINGDOM

■ A U.K. statutory plan for foot-and-mouth disease pays 100% of the market value of slaughtered cattle, sheep and pigs. For cattle, there is similar compensation for bovine spongiform encephalopathy and bovine tuberculosis. For bluetongue, the plan pays 100% of the market value of compulsorily slaughtered animals, plus disposal costs. For poultry diseases such as avian influenza, the plan pays 100% of the market value for slaughtered birds that are not diseased. There is no compensation for diseased birds.

FRANCE

■ The French government will pay 55% of the value, up to a limit of around £160 (\$325) per animal for foot-and-mouth disease. There also is a compensation fund, to which a farmer is required to pay around £0.25 (51¢) per livestock unit each year.

GERMANY

■ Germany's compensation plan relates to notifiable diseases. The cost is shared equally between the government and the farming industry through a variable levy, which is charged by species. This provides 100% of the value of the livestock. There is optional insurance to cover consequential losses, and the government contributes toward the coverage cost.

SPAIN

■ Spain provides compensation for slaughtered animals with no levy. There also is voluntary insurance, which has a 30% to 43% subsidy by the state.

DENMARK

■ Denmark pays only for compulsory slaughter, providing 100% of market value. If the entire herd is slaughtered, a further 20% is paid.

ITALY

■ Italy provides 100% compensation for slaughtered animals and has no levies.

Source: Reynolds Porter Chamberlain L.L.P.

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Growers rely on coverage, risk management to protect crops

Federal insurance programs, diversification of crops help farmers stay in business by spreading their risk

By LOUISE ESOLA

Among the riskiest of businesses is one that puts most of its successes and failures in the hands of nature: farming.

Both large and small growers nationwide face perils—experts point to weather, from drought to flood, as the number one risk—that can wipe out a season's worth of potentially lucrative crops. For certain crops in certain regions, catastrophe can strike as often as annually, experts say.

"For farmers, it's either feast or famine," said Mike Benishek, director of risk management for Palmetto, Fla.-based Pacific Tomato Growers Ltd. and more than 20 other produce companies concentrated in the southeastern United States. "In any year we can make \$50 million to \$250 million. That's a huge swing (in revenues). Welcome to Mother Nature."

But with the help of a heavily regulated and subsidized federal crop insurance program and a bountiful list of risk management

practices, agriculture risk management experts say it's not all gloom for growers. Growers have a variety of means to protect their products and profits, from diversification of crops and planting areas to spread risk to using hedge funds to guarantee income when prices hit lows.

The first line of protection, and perhaps the most popular, according to experts, is the federal government's crop insurance program.

"This is truly a different breed of business," said Robert Stallings, president of Lakeland, Fla.-based

Stallings Crop Insurance Corp., an agency with more than \$15 million in federal crop insurance premiums written in the southeastern United States.

"The government is heavily involved and they have to be," said Mr. Stallings. "The risks are enormous. Private insurers wouldn't touch this without the government. (Private insurers) would go broke."

The U.S. Department of Agriculture's Risk Management Agency, formed during the Dustbowl era and revamped in the 1980s, regu-

lates and reinsures 16 federally approved companies that provide crop insurance for growers small and large, including conglomerates of gigantic corporate growers, across the nation.

The agency keeps tabs on all actuarial data and sets rates, premiums and indemnities. It says which crops in what areas can be insured and for how much, the details of which are available in federal crop data sheets that provide insurance

Continued on next page

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Livestock: Farmers focus on loss prevention

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The NFU Mutual Insurance Society Ltd., the Stratford-upon-Avon, England-based insurer of about two-thirds of U.K. farmers, provides livestock insurance in conjunction with the government's compensation program for foot-and-mouth, tuberculosis and brucellosis.

The insurance coverage provides 25% of the value of slaughtered stock as valued by the government. So farmers would receive a total of 125% of the value of the slaughtered stock, said a spokesman for NFU Mutual.

"Takeup has steadily declined over the last 30 years, largely because the economics of farming has changed," the NFU Mutual spokesman said. "The value of livestock is less in relation to other assets on a farm. Farmers look at the overall financial position and prefer to look at biosecurity, making the farm secure from infection, rather than insurance. In addition, profits have declined in livestock farming."

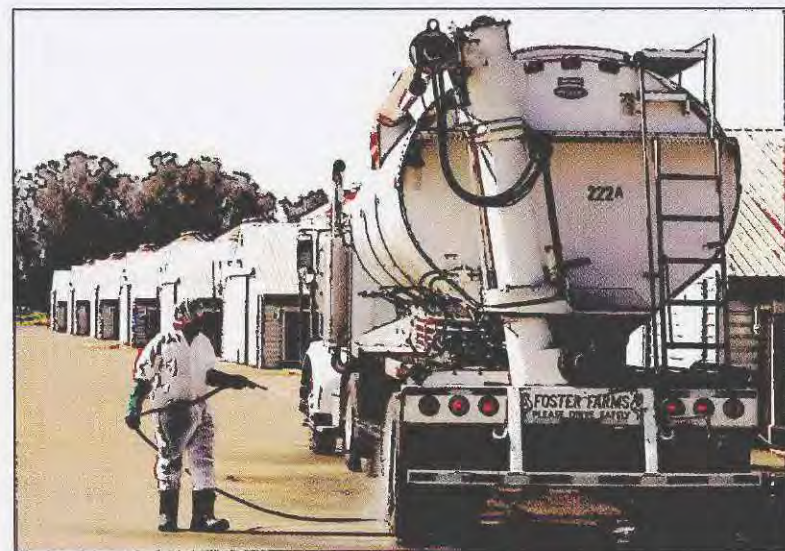
Research conducted in 2004 on behalf of the U.K.'s Department for Environment, Food and Rural Affairs about insurance for consequential losses found that most livestock farmers do not regard insurance as a priority risk management strategy in respect of animal diseases that require owners to notify authorities.

The study, "Assessing Livestock Farmers' Attitudes Towards Consequential Loss Insurance," found that farmers prefer to focus on preventing contact with potential sources of infection—for example, visitors and new stock. Cost and availability of coverage were the main barriers, the report said.

Indeed, the NFU Mutual spokesman said the insurer did not provide cover for avian flu or bluetongue in livestock. "We do not think that these diseases can be covered in a viable scheme. There is the potential for very high claims and premiums would have to be set too high for farmers," he said.

Bill White, livestock expert at FSJ Broking, the London-based wholesale division of Heath Lambert Ltd., said there is a "muted demand" for coverage as vaccines are expected to be available next summer.

Good biosecurity measures by



AP PHOTOS

Above, a feed truck is sprayed before entering a sterile area. Due to recent livestock disease outbreaks, farmers are centering on loss prevention and biosecurity rather than insurance.

farmers can reduce the risk but not entirely as avian flu and bluetongue can be spread by airborne means, he said.

The focus is on loss prevention rather than insurance, and biosecurity is the new buzzword, experts say.

DEFRA defines biosecurity as "the prevention of disease-causing agents entering or leaving any place where farm animals are present, or have been present recently." It also advises minimizing "where possible the movements of people, vehicles or equipment into areas where farm animals are kept, including fields, sheds, markets or other holding areas."

Rekha Thaman, a solicitor at RPC in London, said the U.K. government has found it expensive to compensate for animal diseases and plans to introduce a levy on farmers based on the size of each farm and its operation. "The government hopes this will provide an incentive for farmers to take biosecurity measures," she said.

A DEFRA spokeswoman said, "Work is ongoing at both the U.K. and E.U. level. In the U.K., the government remains committed to taking forwards proposals for responsibility and cost-sharing. No final decisions have yet been reached." In recent weeks, DEFRA issued "Responsibility and Cost Sharing for Animal Health and Welfare" seeking public comment on various

cost-sharing proposals.

The NFU said farmers will demand more say on risk management and loss prevention if they are to pay toward the cost of compensation.

Livestock disease outbreaks are also to be tackled at an E.U. level through risk management. The European Commission recently adopted "Prevention is Better than Cure," its animal health strategy through 2013.

Markos Kyprianou, E.U. commissioner for health, said the E.C. would step up its preventive approach and strengthen existing mechanisms. "Biosecurity will be improved on farms, at borders and during animal transport," Mr. Kyprianou said in a statement.

"The surveillance of diseases will be increased across the European Union, and emergency preparedness will be reinforced," he said. "The objective is to invest more in preventive measures, thereby reduce disease outbreaks and the much higher costs associated with them."

While the focus has been on Europe and particularly the United Kingdom, the issues are global, Heath Lambert's Mr. White said. The last recorded outbreak of foot-and-mouth disease in the United States was in 1929, but a major outbreak in Kansas alone would cost livestock producers around \$1 billion, he said.

CONTINUED FROM PREVIOUS PAGE

specifics on more than two dozen insurable crops. According to the USDA, 80% of growers nationwide are insured by its program. The remaining 20% are either self-insured or bear the risks unprotected, a USDA spokeswoman said.

The USDA helps farmers stay in business mainly by spreading the risk across the country and absorbing the costs, which wouldn't be affordable in the hands of private insurers, said Tim Hoffman, Kansas City, Mo.-based director of product administration and standards division for the USDA's Risk Management Agency.

"What they found when the private sector tried to get involved was that the perils were too much for them to bear," he said.

Unlike other industries, which often see government regulation as a handicap to business, growers and crop insurers typically welcome the government's help, experts say.

"This is a hugely risky program and reinsurance is hard to come by, so the government steps in and provides that," said Frank Schnapt, vp of the Overland Park, Kan.-based National Crop Insurance Services Inc., a trade association that represents companies that sell crop insurance.

The program costs billions in federal dollars. The government pays up to 60% of farmers' premiums, depending on the crop, and pro-

vides reinsurance for the regulated companies that sell crop coverage. So far this year the USDA has paid \$67.26 billion in claims and \$3.82 billion in subsidies, according to data provided by the USDA.

Federal programs

The federal program includes two types of insurance for crops. First is yield insurance, which pays indemnities to farmers when yields fall below the farmer's insured yield level, anywhere from 50% to 75% of the crop in most cases. Payments depend on the crop, area and peril. Drought and flood account for more than 65% of losses, according to the USDA.

A second insurance product under the federal program is revenue insurance, which, in several forms, pays indemnities to farmers based on gross revenue shortfalls instead of yield or price shortfalls. Revenue insurance can cover up to 100% of a grower's income, based on the average of five-year production history.

While federal crop insurance is touted as a must-have for growers, it's not the only layer of protection against risks and shouldn't be, according to experts who say the federal program has its shortfalls. A major hole in the federal program, for example, is it often fails to make a business whole after a catastrophe since indemnities often pay far less than 100% of losses, experts say. And the federal crop insurance pro-

gram excludes several key crops, such as lettuce and cabbage.

Spreading risk

A key way growers can protect revenues is to diversify their operations by planting different crops in different regions and balancing uninsurable crops with insured products, experts say.

Mr. Benishek said Pacific Tomato Growers plants tomatoes in different counties, or even in different states, to spread its risk. A hurricane in Florida, for example, wouldn't affect tomato crops in Virginia, he said.

"The big thing for us is the geographic spread of risk," he said. "You don't put all your eggs in one basket. You don't want all your tomatoes in one field."

Rick Shanks, Kansas City, Mo.-based national managing director for Aon Corp.'s Agribusiness and Food Systems Group, which provides risk management consulting to several large corporate growers, said larger farmers have the advantage when it comes to geographically diversifying their crop. "The bigger guy has a better risk profile than the smaller growers for this reason," he said.

Growers will also stagger the times when they plant crops because weather events, such as freezes and storms, typically cause different levels of damage to budding crops than those ripe for harvest, according to Mr. Benishek.



GETTY IMAGES

Some growers protect their income by diversifying crops in which they spread their risk by planting different crops, such as tomatoes, in different regions.

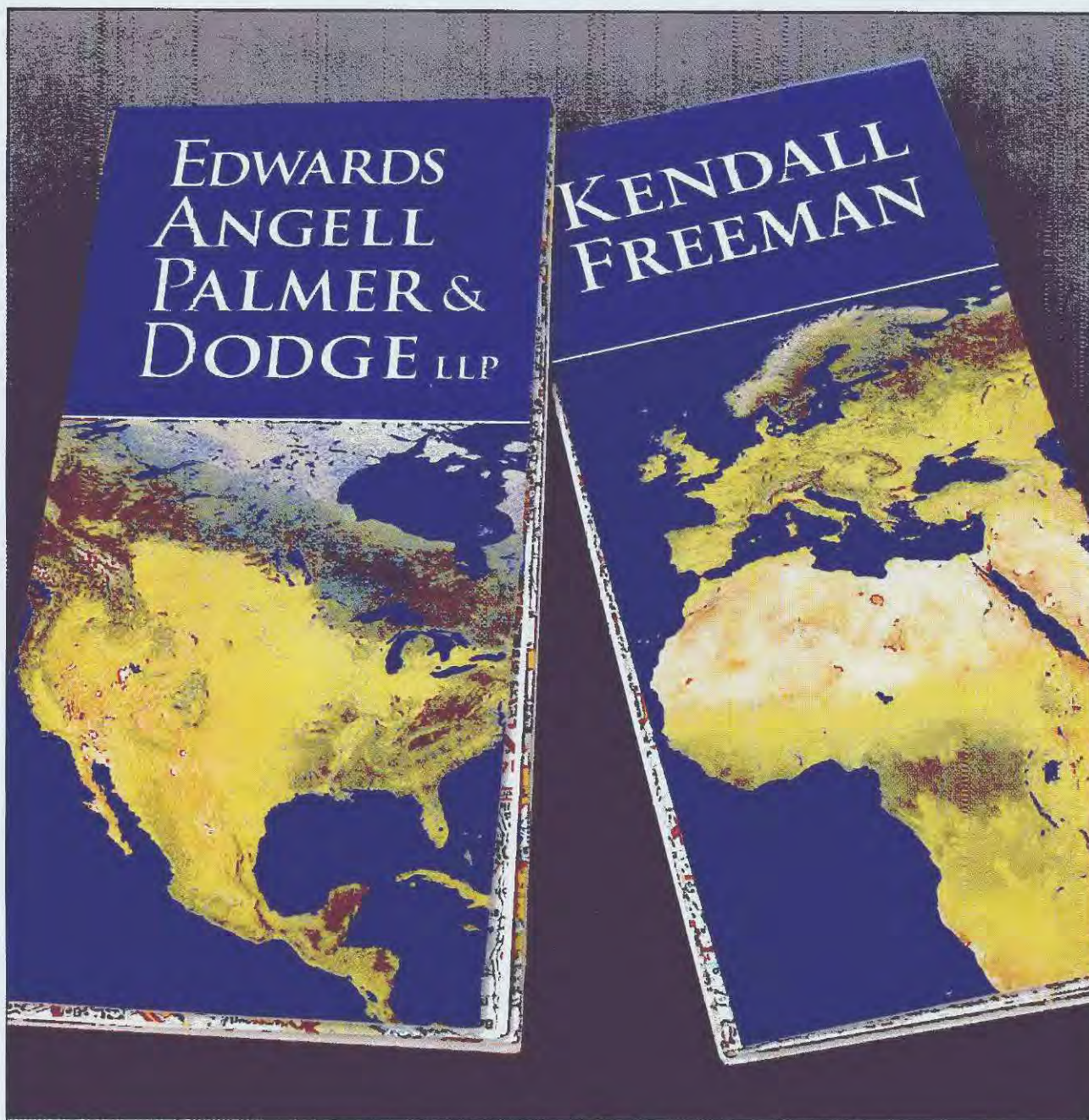
"Mature (crops) are the ones that usually get the most damaged in hurricanes, for example," he said. "Tomatoes take 70 days to grow so we don't plant them all at once."

In addition to adding risk management strategies to everyday operations, some growers lean on noninsurance products to cover agriculture risks. Buying financial hedges or crop futures are two ways growers can ensure income prior to events that could adversely affect their income. Weather derivatives, introduced in the late 1990s, also

help reduce the effect weather can have on a grower's revenue.

However, noninsurance financial products are not as widely used as federal crop insurance and many large growers help manage risks outside of the crop insurance program with operational risk management practices, such as geographic diversification, experts said.

"For us, (hedging) wouldn't work," said Mr. Benishek. "We are so spread out that one weather-related event wouldn't wipe us out."



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Questions Answers

Rick Shanks is a national managing director of Aon Corp.'s Agribusiness & Food System Group in Kansas City, Mo., which provides risk management consulting for large corporate growers. Mr. Shanks has more than 25 years of agribusiness risk management experience, covering everything from supplies to production and helping growers establish plans to mitigate any losses in revenues and product yields. Unrelated to his work with everyday farming risks, he also sits on a board for risk management for food and agriculture



with the U.S. Department of Homeland Security. Recently, he spoke with Business Insurance Correspondent Louise Esola about challenges in the industry.

Water risks rise for corporate growers

Q: In terms of farmers' yield risk, what are the top issues?

Yield risk comes from multiple sources. One can be the seed that they planted didn't do what it was supposed to do; it did not get the yield level. They did everything right but...the seeds did not produce the bushels per acre to meet their plan. The second risk and probably the largest risk would be an event that happened that would reduce the amount of crop they got or destroyed the crop, which would be weather. We look at four elements, pretty much, weather risk, risk of things like wildfire, (and) today more and more

its water quality and quantity are a key elements to that risk.

Q: What best practices are growers putting into play to handle the water quality and quantity issue?

If you are in California and you are growing a crop and you have saline now, which is coming in from the oceans and going into the water table because of erosion of the shelves in the ocean, that can impact the crops. You have factory operations that in some cases are putting chemicals into the (water) used to water crops and grow crops with. Those kinds of issues are

emerging today that weren't there 10 years ago or five years ago.

They need to test the water tables and look at where they are growing the crop around. I'll give you a simple example. There was lettuce growing in California that was involved in a major product contamination issue because they planted the lettuce too close to an animal feeding operation; and so E. coli got from the animals down into the water tables; and then it was irrigated onto the lettuce and then got processed, went into supermarkets...spinach and lettuce both.

Q: What are the top issues related to the largest risk, the weather risk?

Over the last 20 years, crop insurance has paid for a lot of weather risks. I would say right now somewhere around (41% to 44%) of the weather claims that come in on crops are because of drought. You have some crops that are irrigated; some aren't, and drought has caused that kind of percentage. Excess moisture or flood, would be about 25%, so 65%-plus of all the losses to the crops have been in that area, in either drought or excess moisture, or floods. You have about 4% in freeze; 4% in heat; plant dis-

A PODCAST of this abridged BI interview can be heard online at www.BusinessInsurance.com/Qanda

ease, more and more, is starting to creep up, it's only about 3%. That'll give you the overview there that weather is a major factor, obviously. Sometimes plant diseases are caused by weather—if it's too humid it could cause more diseases to be in the crop. Farmers have turned to the federal crop insurance program, if it's a crop that's covered by the federal government, to insure that crop for a yield guarantee and a revenue guarantee.

Q: What noninsurance products are out there, such as hedges and futures and options contracts, that growers can use to help protect revenues?

Some producers will sell their product at harvest, which is probably not the most advantageous time to sell your crop. You may want to sell it earlier; some even sell it before it's planted, in the futures market. Some (growers) store it for later...and then sell it as the prices go up or down, depending on their need. A third area would be a cash-flow forward-contract, where they forward-contract that crop with a processor. If it's a hybrid corn seed they may forward-process that with...companies so they'll buy it ahead of time.

Q: Why is the federal government so heavily involved in risk management for agribusinesses?

I would like to think it's to protect and make sure that we have a high-quality, nutritious food supply. If farmers don't stay in business—there are only so many acres of ground that are being grown with crops—then we are going to have to depend on other countries for our food supply and we probably do enough of that now...Would you like the same situation for the U.S. food system that we've got with foreign oil right now?

Starting at this spot on Springer Mountain, Georgia, Glen Reynolds walked 2,178 miles. And then he did it again.

That's called going the distance.

Yes, twice Glen has thru-hiked the Appalachian Trail, and for years has been a backcountry patroller, as well.

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Top 10 risk management stories of 2007

1. Rates for property/casualty insurance begin to decline.
2. Congressional lawmakers launch efforts to extend the federal terrorism insurance backstop.
3. Some brokers and insurers float new compensation plans.
4. Marsh management woes.
5. Private equity expands buyouts of publicly held brokers.
6. AIG sues former executives, including Maurice Greenberg, to recover settlement payouts.
7. IRS moves to limit tax breaks for captives.
8. Supreme Court limits punitive damage awards.
9. A real estate developer and insurers settle on World Trade Center coverage.
10. New York proposes easing reinsurer collateral rules.

Relatively calm hurricane season further cushions prices

Credit ratings reflecting risk managers' efforts; uncertainty remains about broker compensation, subprime credit crunch

By MARK A. HOFMANN

Something that didn't happen ranked among 2007's top risk management stories, according to risk managers.

That something was the active hurricane season predicted by meteorologists early in the year. In fact, for the second year in a row, the continental United States was spared any significant hurricane damage.

Risk managers also cited the continuing soft market, the continuing issue of broker compensation and the increased importance of enterprise risk management as among

the year's top stories. Their concerns as year-end approached included the unknown impact of the subprime mortgage market collapse and uncertainty over the future of the federal terrorism insurance backstop.

The lack of hurricanes came as welcome news to corporate risk managers.

"For us, I think it was the delightful surprise that the number of tropical storms striking Florida was nowhere near the prediction—in fact, there were none," said John Phelps, director, business risk solutions, for Blue Cross/Blue Shield of Florida in Jacksonville. "That

delights us not just from a business standpoint, but ultimately from a premium standpoint too. One of the key drivers of the capacity cycle has been catastrophes, so that was good news."

"Biggest and best news was the second consecutive calm storm year," said Bradley R. Wood, senior vp-risk management for Bethesda, Md.-based Marriott International Inc. "No doubt the storms will return, but for now, the risk management community can enjoy a more rational market."

Market conditions brought good news to risk managers in 2007 as well.

"I consider the story of the year hasn't really been a story, but is the continued soft market for most insurance coverage," said Terry Fleming, director of the division of risk management for Montgomery County, Md. in Rockville.

"There are a lot of options and deals to be made out there. It will be interesting to see, with the economy changing, how long this will last," Mr. Fleming said.

The role of risk managers also got a boost when Standard & Poor's Corp. announced late in the year that it was considering taking into account the quality of nonfinancial companies' enterprise risk manage-

ment practices in determining credit ratings.

"In practical terms, it means that companies' credit ratings will be partially determined by the maturity of their risk management practice," said Beaumont Vance, who is senior enterprise risk manager at Sun Microsystems Inc. in Denver.

"What it really means is that you're going to see risk management activity escalated in nonfinancial institutions the way it is currently escalated in financial institutions," Mr. Vance said.

See **REVIEW** next page

Review: Unresolved issues remain for risk managers

CONTINUED FROM PREVIOUS PAGE

And "the fact that the issue of broker compensation isn't still resolved is a story itself," said Janice Ochenkowski, managing director at Jones Lang LaSalle in Chicago. "I think that the increased transparency has been helpful to insurance buyers. We're still not there

And 'the fact that the issue of broker compensation isn't still resolved is a story itself.'

Janice Ochenkowski, Jones Lang LaSalle

because we're still talking about different types of compensation that may or may not be disclosed," said Ms. Ochenkowski, who is president of the Risk & Insurance Management Society Inc.

The subprime mortgage crisis was also high on risk managers' list of top stories and major concerns.

"For 2007, I think the biggest issue that will continue to have collateral damage in 2008 is the subprime mess," said Lance Ewing, vp-risk management at Harrah's Entertainment Inc. in Memphis, Tenn. "It will have ripple effects in our insurance marketplace with reinsurers, such as Swiss Re feeling some of the pain, as

well as the slow down it causes in the housing market, which will affect brokers' and carriers' business. Lending institutions are pulling back on certain deals and tightening up their credit requirements after they got too close to the flame."

"I think its long-term effects have not been revealed yet," said Mr. Phelps. "I wonder about the ultimate impact on our economy from this subprime debacle."

The fate of the federal government's terrorism insurance backstop—unknown by mid-December—also concerned risk managers.

Whether the program is extended remains a great concern to risk managers, said Marriott's Mr. Wood. After a series of "baby steps, we're almost to the finish line, the hope is we'll get off this roller coaster ride of two- and three-year extensions" with a longer-term extension, he said.

And despite the mild hurricane season, Mother Nature's potential for loss remained a concern.

"What concerned me the most were the California fires," said Mr. Ewing. He said natural disasters continue to expose the problems authorities face in dealing with such events.

"While the emergency responders are to be commended the resources are not formidable enough to respond. As a frustrated underwriter, I have to ask, while not as predictable as a hurricane, can wildfires be the next cat loss category in the coming years?" he asked.

Buyers experience low P/C rates

Risk managers enjoyed lower property/casualty rates this year as, for the second straight year, insurers saw no major catastrophes and strong financial results across all sectors.

The good news began as early as January, with some buyers seeing their primary general liability rates fall as much as 30% and their excess rates dropping as much as 15% as insurers reported significantly improved financial results and the markets remained competitive, liability brokers said.

"The market for good risks is as competitive as I've seen it in years,"

said Sam Elliott, director of the Southern California property/casualty operations at ABD Insurance & Financial Services in Torrance, Calif.

Similarly, January's reinsurance renewal season was relatively smooth compared with the previous year, with industry officials describing it as "boring" and "very orderly."

That trend continued and even accelerated throughout the year industrywide, as the feared big hurricane season never materialized.

It is well known that rating levels are down, said Grace Osborne,

managing director and practice leader for North America insurance financial services at New York-based Standard & Poor's Corp., discussing reinsurance rates at the Property Casualty Insurers Assn. of America annual meeting in October. "It's just a matter of the extent of the decrease in pricing relative to the risk," she said.

The overall softening trend is expected to continue in 2008, say observers. Pricing pressure is "going to be what I describe as a slow grind," said Mark Lane, an analyst with William Blair & Co. in Chicago.

—By Judy Greenwald

Backstop extension stalls in Congress

Extending the federal terrorism insurance backstop looked like a slam dunk at the beginning of 2007. The new chairmen of the relevant committees in both houses of Congress—Senate Banking, Housing and Urban Affairs Committee Chairman Chris Dodd, D-Conn., and House Financial Services Committee Chairman Barney Frank, D-Mass.—both promised to move swiftly on reauthorizing the backstop, which was slated to expire on Dec. 31.

But the issue was overtaken by

others, and the House did not pass its backstop bill until September, with the Senate waiting until November to follow suit.

The bills varied greatly in their scope. The House bill called for extending the program for 15 years and adding group life insurance to the list of lines covered by the backstop. It also called for requiring insurers to offer coverage for nuclear, chemical, biological and radiological losses. The White House threatened to veto the House bill if it should arrive on President Bush's desk.

The Senate bill basically called for extending the existing program for seven years, although it, like the

House bill, would permit the backstop to cover acts of domestic as well as foreign terrorism. The Senate measure won administration backing.

The White House reiterated its veto threat last week as the House prepared to pass a "compromise" version of the bill, which accepted the Senate seven-year timeline and removed the NCBR provision, but kept other provisions opposed by the administration. The increasing likelihood that the backstop would expire as scheduled, leaving risk managers suddenly without terrorism coverage, made the New Year look as though it could be very unhappy indeed.

—By Mark A. Hofmann

New compensation plans introduced in 2007

In the wake of industry investigations where the world's largest brokers stopped accepting millions of dollars in contingent commissions and some insurers were forced to stop paying them, new broker compensation plans were introduced in the market in 2007.

At the beginning of the year, Travelers Cos. Inc. and Chubb Corp. began paying brokers "supplemental commissions" in lieu of contingent commissions. Unlike contingents that are paid after brokers hit volume or profit thresholds, supplemental commissions provide brokers fixed compensation based on the broker's prior-year performance with insurers.

Despite receiving regulatory approval, supplements were not accepted by every broker that abandoned contingents. While Arthur J. Gallagher & Co. began accepting them, Willis Group Holdings Ltd.'s Chairman and Chief Executive Officer Joe Plumeri likened them to

contingents and rejected them in April.

Marsh Inc. and Aon Corp. have not accepted any supplements, although they have not publicly denounced them.

In August, Marsh—and subsequently Aon and Willis—gained approval to begin accepting certain fees for services from insurers on brokerage transactions.

Then in September, Marsh and Willis introduced a new 2.5% brokerage fee on insurers in the United Kingdom. Aon introduced a similar levy back in 2001.

Then in November, Marsh said it had begun discussing with various insurers whether they would pay the broker new "enhanced commissions" as part of its compensation for its U.S. commission-based middle-market and small commercial account business.

It remains to be seen whether Aon and Willis will follow suit.

—By Sally Roberts

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Marsh woes highlighted by management changes

Marsh & McLennan Cos. Inc. continued to face challenges throughout 2007 and nowhere was this more apparent than in the prolonged string of management changes that occurred at its struggling Marsh Inc. brokerage unit.

In September, MMC's Chairman and Chief Executive Officer Michael G. Cherkasky fired Brian Storms, whose two-year tenure at the helm of Marsh failed to get the broker back on track following its 2004 fraud and bid-rigging suit and resulting \$850 million settlement with New York authorities. Mr. Storms originally succeeded Mr. Cherkasky in 2005, who took over the helm of Marsh from Ray J. Groves the day after the bid-rigging suit was filed.

Mr. Cherkasky, who assumed Mr. Storms' role, attributed the ousting to poor execution of Marsh's long-term strategy, but several observers say the near loss of Timothy J. Mahoney, then Marsh's CEO of the Americas, played a part.

Mr. Mahoney resigned from Marsh in August to join rival Integro Ltd., but changed his mind after receiving what observers said was a multimillion dollar counteroffer from Marsh.

Following Mr. Storms' departure, Marsh realigned its senior management team. Then in December, Marsh announced that Daniel S. Glaser, a senior executive for the European operations of American International Group Inc., would head the brokerage unit.

While Marsh appears to have its new senior management team in place, several analysts say new leadership is not complete without a new leader for MMC.

When asked in November why he thinks MMC's board has not asked him to step down, Mr. Cherkasky said that while he takes responsibility for Marsh's recent failures, MMC's board makes that ultimate decision.

—By Sally Roberts

4

Private equity firms continue acquisitions

During the first half of 2007, private equity firms acquired several retail and wholesale brokers that had already experienced large growth due to their own acquisitions of other brokers.

In January, Briarcliff Manor, N.Y.-based USI Holdings Corp. announced that GS Capital Partners would buy out the broker for \$1.4 billion. GS Capital is a private equity affiliate of New York-based Goldman, Sachs & Co.

That deal came less than five years after USI's initial public offering.

Then in March, Hub International Ltd. took advantage of the abundance of private equity capital avail-

able during the first part of 2007. The Chicago-based middle-market broker announced that it would be acquired by funds advised by private equity group Apax Partners and Morgan Stanley Principal Investments. The acquisition was valued at about \$1.8 billion.

Those two deals took publicly traded brokers private.

Then in June, New York-based Blackstone Group bought a majority stake in Alliant Insurance Services Inc. Blackstone purchased Newport Beach, Calif.-based Alliant from another private equity firm, New York-based Lindsay Goldberg & Bessemer, reportedly for \$1.1 billion.

The arrangement surprised some observers because Lindsay Goldberg acquired Alliant just 18 months earlier.

Private equity money factored into other 2007 deals including the combining of BISYS Group Inc.'s insurance services and retirement operations with Dallas-based Crump Insurance Services. New York-based private equity firm J.C. Flowers Co. L.L.C. made the merger possible by purchasing the BISYS operations for about \$650 million in May.

The combination resulted in the creation of Crump Group Inc., which *Business Insurance* in 2007 ranked as the largest U.S. wholesaler based on its 2006 premium volume of \$959 million.

—By Roberto Cenicerós

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Newsmakers 2007

Connecticut Attorney General **Richard Blumenthal** not only kept industry investigations alive in 2007, he moved the focus away from insurers and brokers and on to the reinsurance brokerage industry. In October, Mr. Blumenthal sued



Mr. Blumenthal

Guy Carpenter & Co. L.L.C., alleging that the Marsh & McLennan Cos. Inc. reinsurance brokerage unit conspired with reinsurers to

fix prices and stifle competition.

While the suit is reminiscent of former New York Attorney General Eliot Spitzer's 2004 fraud and antitrust suit filed against MMC and its insurance brokerage unit Marsh Inc., it remains to be seen whether it will have the same industrywide impact.

Mr. Blumenthal has said that further action is anticipated.

Marsh & McLennan Cos. Inc. Chairman and Chief Executive Officer **Michael G. Cherkasky** came under fire this year for the continued struggles at MMC's Marsh Inc. brokerage unit. While he fired Marsh CEO Brian Storms in September after various initiatives Mr. Storms implemented to improve the broker's performance backfired, many analysts and observers say the move did not go far enough and that Mr. Cherkasky should lose his job.



Mr. Cherkasky

When asked directly during a third-quarter analyst call why he thought the board of MMC had not asked him to step down, Mr. Cherkasky said that his job is to put the right leaders in place and help them be successful. While he admitted to getting that wrong with Mr. Storms, he said he believes he can get it right.

Robert Clements, who has made a career of countering market capacity shortages with start-up insurance ventures, kept the streak going this year with the formation of Ironshore Insurance Ltd.



Mr. Clements

The need this time, in the wake of Hurricane Katrina, was for catastrophe-exposed property insurance capacity. Mr. Clements helped raise \$1 billion from private equity investors, and Bermuda-based Ironshore started writing property policies in several Southeastern and Gulf Coast states.

Since then, it has expanded into professional liability lines and last month acquired a U.S.-licensed shell company, renamed Ironshore Indemnity, from Folksamerica Reinsurance Co.

Mr. Clements, who is also chairman of New York-based broker Integro Ltd., can add Ironshore to a list of his start-ups that includes ACE Ltd., XL Capital Ltd., Arch Capital Group Ltd. and Integro.

When Florida Gov. **Charlie Crist** signed legislation in January to add up to \$17 billion in state-backed capacity for buyers of property catastrophe reinsurance, reinsurers worried that the measure would significantly reduce profits for the worldwide reinsurance market and halt the spat of start-up reinsurance vehicles that targeted catastrophe risks.

But as it turned out, the measure's impact has been less than initially anticipated, although some say expanding the Florida Hurricane Catastrophe Fund to more than \$30 billion has contributed to softening elsewhere.

"It's hard to imagine that some of that capital hasn't found its way into other segments of the market, including the casualty market," said Mark Lane, an analyst with William Blair & Co. in Chicago.

New York Insurance Superintendent **Eric Dinallo** has tackled several major insurance issues in his first year in office.



Mr. Dinallo

After helping to broker a settlement over the World Trade Center insurance claim, he assumed leadership of a state effort to modernize regulation of the financial services industry. One key proposal would ease collateral requirements for non-U.S. reinsurers, similar to the intent of an independent Florida program.

Senate Banking, Housing and Urban Affairs Committee Chairman **Christopher J. Dodd**, D-Conn., promised only weeks after his party won control of Capitol Hill in late 2006 that extending the federal terrorism insurance backstop would be one of his legislative priorities in 2007. It took him near-



Sen. Dodd

ly a year, but he delivered on that promise in October with a bill that the White House said it could support. Even after the full Senate approved the bill, it had to be reconciled with a more expansive House bill, a process that pushed extension painfully close to the backstop's Dec. 31 expiration. Sen. Dodd, meanwhile, decamped to Iowa to seek support in his long shot campaign for his party's presidential nomination.

Few lawmakers have been as supportive of the federal terrorism insurance backstop program as House Financial Services Committee Chairman **Barney Frank**, D-Mass. But after the Senate approved an extension bill far less comprehensive than the one Rep. Frank shepherded through the House, the Bay State lawmaker threw down the gauntlet. Speaking to the Property Casualty Insurers Assn. of America in late October, Rep. Frank said he was considering legislation to extend the current program 120 days to allow House and Senate negotiations rather than being forced to accept the Senate bill because of the backstop's looming Dec. 31 expiration, raising the possibility of market uncertainty over the backstop's future extending into 2008.

Maurice R. Greenberg opened a new front in his running battle with American International Group Inc. in November, reporting in a Securities and Exchange Commission filing that he plans to discuss AIG's "performance and strategic direction" with other shareholders and third parties.

Those discussions could include the "suggested disposition" of certain AIG operations and concerns about the insurer's management, the filing said.

Mr. Greenberg, who was forced out in 2005 after more than four decades at AIG's helm, controls more than 13% of the company's stock shares through holdings of his own and those of entities he manages, including C.V. Starr & Co. Inc. and Starr International Co.

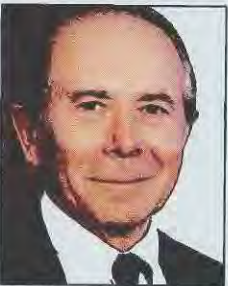
Whether he can generate enough shareholder support to force changes in AIG's operation or management remains to be seen.

The SEC filing followed a swap of lawsuits between AIG and Mr. Greenberg during the summer over AIG's \$1.64 billion settlement

Continued on next page



Rep. Frank



Mr. Greenberg

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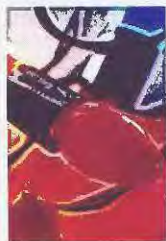
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—YEAR IN REVIEW - RISK MANAGEMENT—

CONTINUED FROM PREVIOUS PAGE

after he retires.

of bid-rigging and accounting fraud charges brought by the New York attorney general. Mr. Greenberg remains a defendant in that action.

Brian O'Hara, who has helped guide XL Capital Ltd. from its inception in 1986 through extraordinary growth and recent tough times, announced during 2007 that he will retire as chief executive officer in July 2008.

In 1986, XL wrote \$206 million of U.S. excess liability premiums from one small Barbados office; in 2006, XL recorded total revenues of \$9.8 billion from an array of products written in 72 offices worldwide.

But a series of financial setbacks in 2005 prompted XL, now based in Bermuda, to implement a risk management initiative and restructure its top management.

Mr. O'Hara is scheduled to serve as XL's chairman for a year



Mr. O'Hara

After making his name in the commercial insurance industry with his investigations into broker compensation practices and finite risk, **Eliot Spitzer** continued to influence the sector after he left the New York Attorney General's office at the end of 2006.

Two days after being installed as **Gov. Spitzer** New York Governor on Jan. 1, 2007, Gov. Spitzer announced that he had already started work on reforming New York's costly workers compensation system.

Two months later, the governor unveiled a reform plan that drew praise from business as well as from labor. Gov. Spitzer had managed to do what others before him had failed to do: bring together opposing political interests to back the plan that included limiting the number of years that permanent partial disability claimants can receive indemnity benefits.



Gov. Spitzer

R.I. Blues plan settles corruption charges

Lobbyists made illegal payments to state officials

By DAVE LENCKUS

PROVIDENCE, R.I.—Blue Cross Blue Shield of Rhode Island will pay \$20 million to resolve federal public corruption charges over payments that its lobbyists made to state officials, the U.S. Justice Department announced last week.

As part of the agreement, federal officials agreed not to press criminal charges against the health insurer as long as it continues to cooperate with federal and state investigations.

The Providence, R.I.-based insurer also agreed to implement ethical reforms on how it will interact with state officials and not to impose rate hikes to recoup the \$20 million fine.

Under the agreement, BCBSRI accepted responsibility for former executives whom the insurer admitted acted within their authority as lobbyists when they made illegal payments to elected officials.

For example, the insurer paid \$400,000 in insurance brokerage commissions to an unidentified former state Senate President while the insurer's executives were lobbying him, the Justice Department said.

A Justice Department spokeswoman said she could not elaborate on the circumstances under which the official was paid the commissions.

The insurer paid \$74,000 to a communications company to produce a cable access program that former State Senator John Celona hosted. Mr. Celona was paid more than \$13,500 as the host.

In addition, the insurer paid about \$175,500 to a paper prescription-bag business that former House Majority Leader Gerard Martineau ran.

Messrs. Celona and Martineau have pleaded guilty to public corruption charges as part of the investigation, the Justice Department noted.

The money from the fine will be deposited into a fund to support projects designed to provide affordable health care services in Rhode Island, according to the Justice Department.

UNDER THE AGREEMENT, BCBSRI accepted responsibility for former executives whom the insurer admitted acted within their authority as lobbyists when they made illegal payments to elected officials.

International NEWS

Regulator won't mandate commission disclosure

By STUART COLLINS

LONDON—The costs associated with mandating that U.K. insurance brokers disclose their commissions outweigh the benefits that would arise from such regulatory intervention, concludes a report released last week.

The U.K.'s insurance regulator, which commissioned the report, is still concerned about the disclosure of certain commission payments, including those paid by insurers to brokers, but says a market solution is still possible.

In October 2006, the Financial Services Authority said it would consider the case for mandatory commission disclosure because it had seen market failures and inefficiencies. But last week, the FSA said it had decided not to make commission disclosure compulsory at this stage.

The decision followed publication of a cost/benefit analysis commissioned by the FSA and conducted by the London-based unit of consulting firm CRA International Inc., which said that the costs of regulatory intervention would not be justified.

But the London-based FSA said its concerns over market failures and inefficiencies remained, and specifically mentioned potential conflicts of interest that could arise from commissions paid by insurers to brokers.

"We believe the effective management of conflicts of interest has never been more crucial," Hector Sants, the FSA's chief executive officer, said in a statement. "The increased blurring of the distinction between insurers and intermediaries increases the need for conflicts of interests to be managed."

The FSA said it will likely take action next year to improve the quality, clarity and consistency of key disclosures made by brokers to their commercial clients.

Specifically, it will publish a discussion paper in which it will consider whether key disclosures could be standardized. The option of mandatory disclosure remained open, and would be considered in the discussion paper, it said.

The regulator also said it would car-

FSA GAUGES MARKET TRANSPARENCY

The U.K. Financial Services Authority commissioned a report to determine whether there was a lack of transparency in the commercial insurance market and whether compulsory commission disclosure was justified on cost/benefit grounds. Key findings of the report, "Commercial Insurance Commission Disclosure: Market Failure Analysis and High Level Cost Benefit Analysis," include:

- No substantive market failures were found for large corporate customers.
- Middle-market companies were unaware of the right to ask for commission disclosure.
- 50% of clients surveyed—or 50% to 60% of the market by gross premiums—said they received commission disclosure from their broker.
- Most insurers pay contingent commissions.
- Some 400 to 500 brokers accept contingent commissions.
- Mandatory disclosure would include a one-time cost of £87 million (\$176.6 million) and an ongoing cost of £34 million (\$95.4 million).
- The cost burden would fall mainly on smaller brokers.

ry out "thematic" work on conflicts of interest that arise from commissions paid by insurers to brokers.

The London-based Assn. of Insurance & Risk Managers said in a statement that it supports the FSA's continued interest in broker remuneration and called for a market solution to resolve "shortcomings" over transparency.

"Our view is that (commissions) should be disclosed without asking and that commission disclosure should be standardized," said Colin Campbell, AIRMIC chairman and head of risk management at London-based retailer Arcadia Group Ltd.

The FSA also said it would like to see a market solution to the issue.

"We would be very interested in a market solution," said Ed Harley, head of department in the FSA's retail policy division.

U.K. summer floods cause nearly \$6B in claims for insurers

Industry seeks long-term plan on flood management

By BEN NORRIS

LONDON—Flooding in the United Kingdom earlier this year, which resulted in insurance claims of about £3 billion (\$6.1 billion), were primarily the result of surface water flooding exacerbated by poor management of flood risk, experts say.

In its report, "Summer Floods 2007: Learning the Lessons," the London-based Assn. of British Insurers noted that the floods had "revealed both the size of this problem and that it has been woefully neglected to date."

The London-based Environment Agency also recently published a report into the floods, which highlighted a lack of coordinated flood risk management.

"Two-thirds of the properties flooded during the summer were damaged because drains and sewers were overwhelmed, and finding a body that has overall responsibility for surface water flooding has proven complicated," said John Harman, chairman of the Environment Agency, in a statement.

In its "Review of the Summer Floods 2007," which makes 33 recommendations, the Environment Agency called for a coordinated framework to deal with flood risk. This could see the agency take a strategic overview role in England and the different organizations involved in surface water flooding, such as local government, water companies and the Highways Agen-



REUTERS

Heavy rain swept across the United Kingdom during the summer months, causing flooding that resulted in about \$6 billion in claims for insurers.

cy, working together at a local level, it added.

And the ABI called for a "single national body" to be responsible for flood management, "to replace the current piecemeal approach," as part of its recommended 25-year strategy for the U.K. government to manage flood risk, it said in its report.

It recommended that the government undertake institutional reform so that the "Environment Agency has overarching responsibility for coordinating the fight against all forms of flooding and ensuring that the many bodies involved in identifying and reducing risk work together effectively."

Barbara Young, chief executive of the Environment Agency, called on insurers "to provide incentives for insurance buyers to use flood defenses" and for the U.K. government to

continue its funding.

Separately, Johnston, Rhode Island-based Factory Mutual Insurance Co., which does business as FM Global, called upon businesses in the United Kingdom to face up to flood risk.

In a statement, the Windsor, England-based unit of FM Global said that U.K. businesses could save themselves losses of up to £350 million (\$710.5 million) if they take an active approach to the mitigation of risks associated with floods.

With approximately 27,000 commercial claims this year, companies could "reduce their losses by up to 70% if they start taking some of the simple steps that will protect their commercial properties," said FM Global's vp of operations and engineering manager, Tom Roche, in the statement.

Tokio Marine to buy Lloyd's insurer Kiln

By STUART COLLINS

LONDON—Tokio Marine & Nichido Fire Insurance Co. Ltd., part of Tokyo-based Millea Holdings Inc., has agreed to buy Lloyd's of London insurer Kiln Ltd. for £442.2 million (\$897.9 million) in cash.

The acquisition of Kiln will play a pivotal role in the expansion of the international underwriting operations of Tokio Marine, the two companies said in a joint statement.

Tokio Marine will work with Kiln's management to "create a major underwriting platform" for international commercial insurance and reinsurance in the United Kingdom, United States, Europe and Asia.

The Japanese insurer has made a cash offer of £1.50 (\$3.05) per Kiln share, which represented a 40.8% premium on the company's closing price on Dec. 10. Kiln's largest shareholder, Greenwich, Conn.-based W.R. Berkley Corp., has agreed to sell

its 20% shareholding in Kiln.

The previously announced sale of Kiln's 20% stake in W.R. Berkley Insurance (Europe) Ltd. to W.R. Berkley Corp. will go ahead, although the subsequent capital return is no longer expected to proceed.

Kiln, which redomiciled to Bermuda from London in May, managed £1.10 billion (\$2.24 billion) of capacity at Lloyd's of London in 2007.

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News In Brief

CONTINUED FROM PAGE 1

American International Group Inc. Chairman Maurice R. Greenberg that he and other AIG shareholders he is associated with controlled almost 12% of AIG's voting shares, and, as a result, the group is a "controlling person" and violated New York insurance law in failing to obtain the superintendent's "prior approval to possess control" when it announced that it intended to pursue "strategic alternatives" for the insurer. Mr. Greenberg's attorney, Marcia D. Alazraki, of Manatt, Phelps & Phillips L.L.P. in New York, responded saying

that none of the group's members "possess, individually, or collectively, the power to direct...the management and policies of AIG." Both letters were in a Securities and Exchange Commission filing.

Canada OKs tax treaty, urges U.S. approval

Canada has ratified an amended tax treaty with the United States that would allow cross-border employers and their employees to deduct pension contributions on their respective tax returns. The revised treaty would shield against negative tax consequences for cross-border employees, or residents of one country who commute to or temporarily live and work in the other country. It would allow employers to claim deductions for pension contributions made to qualified retirement plans in the other country on behalf of cross-border employees.

Canadian Minister of Finance Jim Flaherty called on the United States to quickly ratify the treaty.

Gallagher buys interest in Jamaican broker

Arthur J. Gallagher & Co. announced it has acquired a 38.5% equity interest in CGM Group Ltd., a Kingston, Jamaica, insurance broker and risk management company. Terms and conditions of the agreement were not disclosed. CGM Group provides property/casualty, health, risk management, reinsurance and modeling services to clients throughout the Caribbean.

Tort costs down last year: Report

U.S. tort costs totaled \$247 billion in 2006, a 5.5% decline from the previous year and the first since 1997, according to a report by

Towers Perrin. The report, "2007 Update on U.S. Tort Cost Trends," which was published by the Tillinghast insurance consulting practice of Towers Perrin, factors in settlements, reserves for future settlements, defense costs and administrative costs.

Okla. ice storm losses could reach \$35M

Insured losses from the Oklahoma ice storm could reach \$35 million, according to Southwestern Insurance Information Service. The industry trade group, which represents insurers writing business in Oklahoma and Texas, said claims have been slow to come in and that \$35 million is a conservative estimate of the damages. The storm knocked out power to 600,000 homes and business in Oklahoma and nearly 350,000 customers in Missouri, Kansas, Iowa and Illinois.

TRIA: Rep. Frank says House won't let backstop expire

CONTINUED FROM PAGE 1

Senate last month, the House bill would extend the program for seven years. A measure the House passed in September would have extended the program for 15 years, but the Bush administration threatened to veto it. Also like the Senate bill, the latest House measure would permit the backstop to cover acts of both domestic and foreign terrorism. Current law covers only acts of foreign origin.

Differences in House version

But the House bill, which passed last week on a 303-116 vote, adds group life insurance to the lines covered by the backstop, which came into being under the Terrorism Risk Insurance Act of 2002.

The House measure also lowers the amount of terrorism losses required to trigger the backstop and contains a so-called reset provision that would provide lower deductibles for insurers that agree to write terrorism coverage for areas that have already suffered terrorist attacks.

The White House opposes all of those provisions, none of which are contained in the Senate measure.

A day before the House vote, the Office of Management and Budget issued a statement of administration policy on the backstop. After

reiterating the administration's longtime contention that the program should be cut back rather than expanded, OMB said if the measure "were presented to the president in the form to be considered by the House, his senior advisers would recommend that he veto the bill."

On the House floor, Rep. Frank admitted his bill might not represent the last word on the matter.

"Now, we are going to pass a bill," Rep. Frank said last week. "We understand that. And we may be able to pass only the Senate bill early next week. We have preserved our ability to do that. There is no chance of this expiring," he said.

"The question is this: Should we acquiesce in a procedure by which the United States Senate waits until after we have adjourned for the Thanksgiving recess and sends us a bill and says, 'This is it, take it or leave it,' or do we say, 'No, we don't like that and we're going to at least try to make you vote on things?'"

Rep. Frank's certainty a bill will pass relieved backstop proponents.

"There is a tremendous amount of relief in the community that we're about to reach a conclusion" because of "the acknowledgment that Barney Frank made that he is not going to allow the program to expire," said Joel Wood, senior vp with Council of Insurance Agents

and Brokers in Washington.

"Until it's done, the anxiety will remain and it's that time of year," Mr. Wood said. "With a substantial majority of commercial policyholders having Dec. 31 expirations, it's a chaotic time of the year in any circumstance, and this has added a layer of frustration. But I think it is

'Given the way Congress is going, nobody would be surprised if it happened the last day or the second-to-last day.'

Ben McKay, Property Casualty Insurers Assn. of America

a great credit to both chambers that a seven-year extension appears to be in the offing."

"RIMS is very optimistic," said Janice Ochenkowski, president of the New York-based Risk & Insurance Management Society Inc. and managing director of Jones Lang LaSalle Inc. in Chicago. Rep. Frank's comments provided a "strong indication that Congress will indeed move ahead in passing a TRIA bill before the program expires Dec. 31." She called it "very promising development in the ongoing impasse."

"Chairman Frank said on the floor that TRIA would not expire, therefore you can conclude that one of two things are going to happen," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office. Either the Senate will pass the House bill or the House will pass the Senate bill, he said.

"Given the way Congress is going, nobody would be surprised if it happened the last day or the second to last day, although we're hopeful it happens earlier," he said.

"A considerable amount of time and energy have gone into crafting legislation that balances the concerns of all stakeholders in both the House and the Senate," said a spokesman for the American Insurance Assn. in Washington. "We still have hope those bodies will work out their differences."

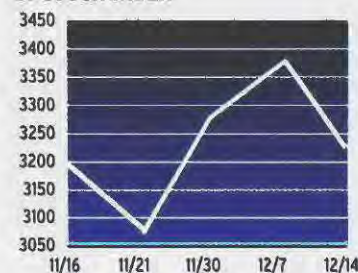
"As the representative of the policyholder community, CIAT's first concern is seeing the creation of legislation that will extend the federal backstop for terrorism risk insurance, and that can win bipartisan support in the House and Senate," said a spokesman for the Washington-based Coalition to Insure Against Terrorism. "The failure to achieve this goal before the existing law expires at year-end will curtail investment and development, and cast a long, dark shadow over an already uncertain national economic picture."

Stock Index

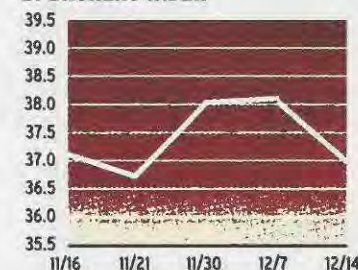
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Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

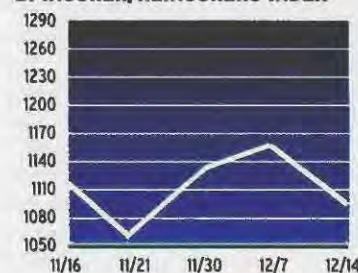
BI STOCK INDEX



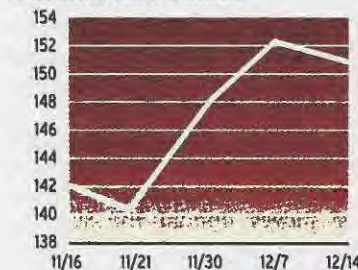
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

BI STOCK INDEX	3234.78	↓ -4.13%
DOW JONES	13339.85	↓ -2.10%
S&P 500	1467.95	↓ -2.44%

LARGEST GAINS

NYMAGIC Inc.	2.59%
Allmerica Financial Corp.	2.43%
Renaissance Re Holdings	2.27%
Gainsco Inc.	1.97%
UNICO American Corp.	1.52%

LARGEST LOSSES

Ambac Financial Group	-15.01%
XL Capital Ltd.	-13.00%
Citigroup Inc.	-10.52%
Selective Insurance Group	-10.47%
AIG	-9.44%

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Ex-GE exec presses fresh Six Sigma use

If you're a former General Electric Co. reinsurance executive, what do you call the California vineyard you've always wanted to own? Six Sigma, naturally.

Kaj Ahlmann, former CEO of GE's Employers Reinsurance Corp., bought his 4,300-acre Lake County, Calif., ranch soon after leaving ERC in 1999, and named it for the quality control methodology championed at GE.

Six Sigma Ranch and Vineyards, Mr. Ahlmann says, is the culmination of an idea that took root when he first visited Northern California wine country decades ago.

"I've always had a passion for (winemaking)," he said. "I enjoy wine tremendously."

Starting with a small vineyard of cabernet sauvignon and cabernet franc grapes in 2001, the ranch added larger vineyards with pinot noir and tempranillo vines in 2002, 2004 and this year, he said. In 2005, he hired a husband-and-wife team of winemakers from Chateau Latour in Bordeaux, France; Six Sigma Ranch's first wine offerings were released in 2006, and the winery will produce about 6,000 cases this year.

The Six Sigma quality control processes Mr. Ahlmann followed at GE lend themselves well to winemaking, he said: He applied them at each step of the ranch's development, from soil analysis and root-stock selection to screening ripened grapes.

If creating a winery sounds like a lot of work, remember that Mr. Ahlmann is still active in the insurance industry. He's a director of Erie Indemnity Co., medical malpractice insurer SCPI Holdings Inc. and sidecar facility Cyrus Re, and has held positions at the former E.W. Blanch Holdings Inc. and online reinsurance market inreon since leaving ERC.

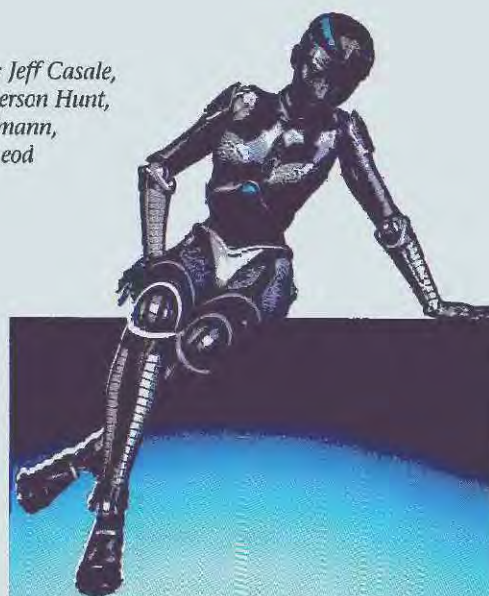
But he's not merely toiling in someone else's vineyard anymore.



The Six Sigma Ranch and Vineyards taps a decision-making process based on goals and rigorous data analysis, its Web site says.

Business Insurance END PAGE

Contributing: Jeff Casale,
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Douglas McLeod



Aussie firm says 'nyet' to Russian CyberLover

People have long worried about losing their identities in romantic relationships, and a soon-to-be-released software tool may validate that concern, according to an online security firm.

A Russian Web site, www.cyberlover.ru, is advertising its February launch of a software tool capable of simulating flirtatious chat room conversations, so other chat room members could unwittingly be wooed by a software program rather than a real person. CyberLover is currently available only in Russian.

The program can connect with up to 10 people in 30 minutes, according to the site. It can persuade users to divulge personal information such as their name, contact information and photos, and lure them to visit Web sites with malicious content, according to information from PC Tools, an Australian anti-virus software firm warning against the program's potential dangers.

"As a tool that can be used by hackers to conduct identity fraud, CyberLover demonstrates an unprecedented level of social engineering," said Sergei Shevchenko, a senior malware analyst at PC Tools, in a statement.

The Russian site said it was not intended for identity fraud and cannot gather any information users don't provide.



UNIVERSAL PICTURES

Actor Russell Crowe suffered a shoulder injury during training to portray boxing legend Jim Braddock in "Cinderella Man," delaying filming and resulting in a dispute with Clarendon National Insurance Co. over a \$3 million claim for co-star Renee Zellweger.

Insurer cold-shoulders 'Cinderella Man' claim

Clarendon National Insurance Co. pulled no punches when it filed a lawsuit against the company that produced "Cinderella Man," a 2005 film in which Russell Crowe portrayed 1930s boxer Jim Braddock.

The New York-based insurer, a unit of Hannover Re Group, filed suit against Omnikrom, the production company formerly known as Colder Than Jersey Productions, in Los Angeles Superior Court reportedly seeking to avoid paying any more than it's already paid because of delays in completing the movie.

The suit cites a \$3 million claim to cover the cost of compensating co-star Renee

Zellweger because filming took an extra seven weeks due to a shoulder injury Mr. Crowe sustained, the Associated Press reported.

In the suit filed earlier this month, Clarendon said it already had paid most of \$6 million in claims under the policy to cover the costs of Mr. Crowe's surgery and rehabilitation as well as other production delays.

Further, Clarendon argues, the production company did not file the claim until July 2005, five months after the balance of the insurance claims were paid, and it should be released from paying Ms. Zellweger's extra fee.

Wacky contest highlights laughable label warnings

For the past 11 years, the Novi, Mich.-based Michigan Lawsuit Abuse Watch has conducted a Wacky Warning Label Contest. Although the winners may bring a chuckle to readers—and this year's winners are no exception—the event has a serious purpose as it seeks to underscore the impact of potential lawsuits on product labeling.

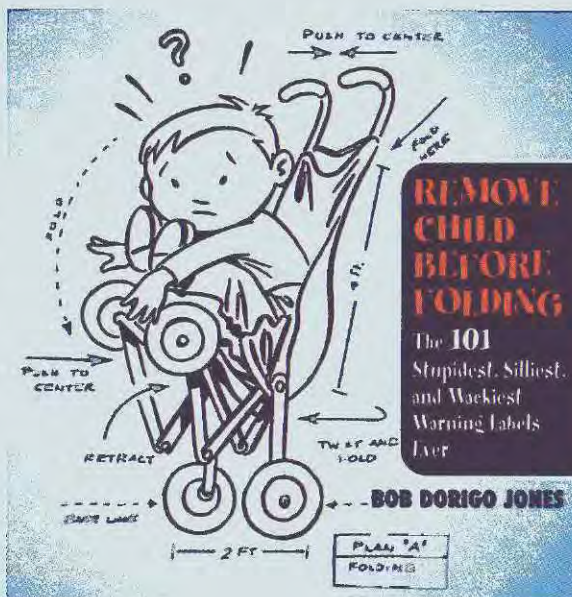
Third place—and \$100—went to Richard Goodnow of Lancaster, Mass., who submitted a label on a baby stroller that included a small storage pouch. The label admonished readers "Do not put child in bag."

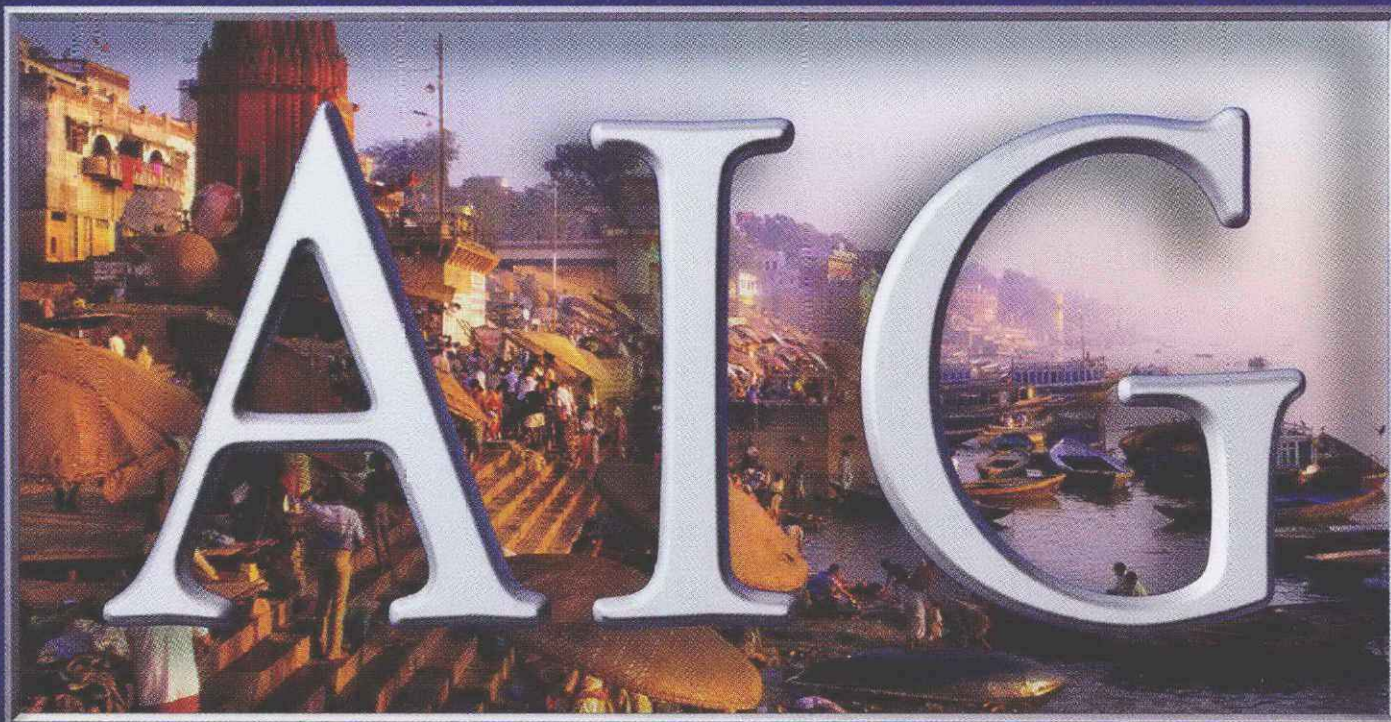
Carrienne, Jacob and Robby Turin of Greensburg, Pa., picked up second place and \$250 for a label they found on an iron-on T-shirt transfer. "Do not iron while wearing shirt," cautioned the label.

And first place, along with \$500, went to Kevin Soave of Farmington Hills, Mich.

He submitted a clear example of labeling overkill if there ever was one by citing the warning on a small tractor that instructed its users: "Danger: Avoid Death."

More examples of wacky warnings can be found at www.wackywarnings.com.





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